



MEMORANDUM

DATE	November 1, 2024
TO	Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board
FROM	Maria Liranzo, Legislation/Regulation/Budget Analyst
SUBJECT	Agenda Item 7: Review, Consideration, and Possible Action to Ratify Amended Regulations Regarding Advertising for Hearing Aid Dispensing as stated in Title 16, California Code of Regulations (CCR) section 1399.127

Background

This proposed regulatory change will clarify that anyone licensed to dispense hearing aids can advertise the practice of fitting or selling hearing aids in accordance with Business and Professions Code (BPC) section 651 and CCR section 1399.127, information required in advertisements, prohibited advertisements, and information required in national advertisements disseminated in California.

The Board submitted the rulemaking file on August 28, 2024, to the Office of Administrative Law (OAL), and subsequently withdrew it on October 8, 2024, to address discrepancies between different versions of the text and to incorporate OAL's recommended modifications to the text. The following proposed modifications were made to the text and noticed for public comment between October 16-31, 2024 (Attachment A):

1. *Subsection (a) was amended to add the word "for" before the word "the," add the words "practice of" before the word "fitting, replace the word "and" with the word "or," remove the words "or services" and "allowed by the license," replace the word "the" with the word "a," add the words "inappropriate or excessive" after the word "unnecessary," and replace the word "goods" with the words "hearing aids."*

The word "for" was added before the word "the," the words "practice of" was added before the word "fitting, the word "and" was replaced with the word "or," the words "or services" and "allowed by the licenses" was removed, and the word "the" was replaced with the word "a" for the purpose of clarity. The practice of fitting or selling hearing aids is the name of the profession of those who are licensed to dispense hearing aids pursuant to BPC 2538.11. This regulation will cover any advertising involved in the fitting or selling of hearing aids and postfitting counseling.

The words "inappropriate or excessive" were added after the word "unnecessary" because the Board has authority to restrict "advertising that would promote the inappropriate or excessive use of health services or commodities" pursuant to BPC 651(i). Furthermore, hearing aids must be selected and fitted so that it provides consumers with the ability to achieve a safe, comfortable, and effective hearing experience in their everyday living. Hearing aids that are not appropriate to a consumer pose a risk to their health, safety, and welfare.

The word "goods" was replaced with the words "hearing aids" because licensees may sell other items that would not fall under the jurisdiction of the Board, such as hearing protectors. Hearing

protectors reduce noise level to prevent or delay hearing loss in people. Licensees may sell these as intervention for hearing loss in people with normal hearing.

2. *Subsection (b) was amended to add the words “the practice of” before the words “fitting,” replace the word “and” with the word “or,” and remove the words “or other authorized services.” These changes are for the purpose of clarity. The practice of fitting or selling hearing aids is the name of the profession of those who are licensed to dispense hearing aids pursuant to BPC 2538.11. These regulations will cover any advertising involved in the fitting or selling of hearings aids and postfitting counseling.*
3. *Subsection (c) was amended to add the words “the practice of” before the words “fitting,” replace the word “and” with the word “or,” and remove the words “or other authorized services.” These changes are made for the same rationale described above in paragraph 2.*
4. *Subsection (d) was amended to add the words “the practice of” before the words “fitting,” replace the word “and” with the word “or,” and remove the words “or other authorized services.” These changes are made for the same rationale described above in paragraph 2.*
5. *Subsection (d)(7) was amended to add the words “advertised price of the hearing aid. Material facts include” between the words “the” and “standard,” replace the word “device” with the words “hearing aid,” add the words “the terms and conditions of the rebate coupon or rebate check” before the words “and discounts,” and replace the word “device” with the words “hearing aid.” The words “all the various material facts” lacked clarity. The changes provide a non-exhaustive list of examples of what are “all the various material facts” such as the standard price, any discounts or sales available, and any terms and conditions to qualify for the rebate coupon or rebate check. This is necessary for consumer protection because an informed decision about the benefits of a rebate coupon or rebate check cannot be made if all the important information about a hearing aid’s price is not provided. The Board determined this type of information helps a consumer establish the accuracy of a price because a consumer can determine how much of a price reduction is being offered.*
6. *Subsection (e) was amended to replace the word “authorized” with the words “hearing aids or,” and add the words “for the fitting of hearing aids” after the word “services.” These changes are for the purpose of clarity. The practice of fitting or selling hearing aids is the name of the profession of those who are licensed to dispense hearing aids pursuant to BPC 2538.11. This regulation will cover any advertising involved in the fitting or selling of hearings aids and postfitting counseling.*
7. *Subsection (f) and paragraphs (1), (2), and (3) were amended to re-include text that was inadvertently removed from the proposed text when the proposed text was modified on March 1, 2024. Subsection (f) in the proposed modified text noticed to the public between March 8 – 25, 2024 was inconsistent with Subsection (f) in the proposed text noticed to the public between November 17, 2023, and January 3, 2024. These changes will re-include text that was removed from the proposed text when it was modified on March 1, 2024. The rationale for these changes can be found in the Initial Statement of Reason on pages 4 and 5.*

During the second 15-day public comment period, the Board received two (2) written comments. One (1) expressed no opposition to the most recent modifications and one (1) was not related to most recent modifications made to the text (Attachment B).

The Administrative Procedure Act (APA) does not require the Board to review or respond to written comments in support of this regulatory action during the final rulemaking process. However, the Board is required to review or respond to timely written comments that object or make a recommendation regarding the regulatory action or the procedures followed by the Board in proposing the regulatory action. The Board is also required to respond to any timely written comments received regarding the changes made to the

proposed regulatory text if the comments received during the public comment period concern the most recent modifications made to the text.

Summary of Comments and Board Response

Summary: The Board received one (1) comment stating that they did not believe anyone with a hearing aid dispensing license could advertise the fitting and selling of hearing aids without being supervised by an audiologist.

- 1. Board Response:** The comment was not specifically directed at the proposed modifications made to the text that was noticed to the public on October 16, 2024, so the Board declined to make any amendments to the proposed text based on the comment, pursuant to Government Code section 11346.8(c). Further, a hearing aid dispenser can advertise without the supervision of an audiologist because they are not required to be supervised unless they are a trainee licensed pursuant to BPC 2538.28 or a temporary licensee who fails either license examination (BPC 2538.27(c)).

Action Requested

Board staff recommends the Board review and consider the provided materials. The Board may wish to determine whether to ratify the second modified text that was noticed to the public from October 16-31, 2024 (Attachment C) and whether to approve the responses prepared by Board staff to the comments received during that period as currently drafted or propose and approve changes to the Board's responses, and direct Board staff to prepare the necessary documents to complete the rulemaking process.

Suggested Motion Language

Move to ratify the modifications to the regulatory text noticed to the public for a second 15-day comment period between October 16-31, 2024, approve the proposed Board responses to comments as noticed/amended, and direct Board staff to take all steps necessary to complete the rulemaking process, including the filing of the final rulemaking package with OAL, authorize the Interim Executive Officer to make any non-substantive changes to the proposed regulations before completing the rulemaking process, and adopt the proposed regulations in Title 16, CCR section 1399.127, as noticed.

Attachment A: Proposed Second Modified Text
Attachment B: Public Comments
Attachment C: Order of Adoption

DEPARTMENT OF CONSUMER AFFAIRS
TITLE 16. SPEECH-LANGUAGE PATHOLOGY AND AUDIOLOGY
AND HEARING AID DISPENSERS BOARD

**PROPOSED SECOND MODIFIED REGULATORY LANGUAGE
Hearing Aid Dispensing Advertising**

Legend: Added text is indicated with an underline.
Omitted text is indicated by (* * * *)
Deleted text is indicated by ~~strikeout~~.
Added modified text is shown in *italic double underline*
Deleted modified text is show in ~~*italic double strikethrough*~~
Added 2nd modified text is shown in **bold double underline**
Deleted 2nd modified text is show in ~~**bold double strikethrough**~~

Amend Section 1399.127 of Article 5 of Division 13.3 of Title 16 of the California Code of Regulations to read as follows:

§ 1399.127. Advertising.

(a) A person licensed to dispense hearing aid dispenser aids may advertise any goods ~~for the practice of fitting and/or selling of hearing aids or services~~ authorized to be provided by such ~~allowed by the license~~ in a ~~thea~~ manner authorized by Section 651 of the Code and this Section so as long as such the advertising does not promote the unnecessary, inappropriate, or excessive or ~~excessive~~ use of such hearing aidsgoods or services.

(b) An advertisement violates for the practice of fitting and/or selling hearing aids or other authorized services is in violation of Section 651 of the Code when ~~if it violates any provision of Article 8, Chapter 5.3 of Division 2 of the Code, beginning with Section 2538.10.:~~

(1) ~~Is not exact, and any conditions or other variables to an advertised price are not disclosed.~~

(2) ~~Includes a statement of price comparison that is not based upon verifiable data.~~

(3) ~~Advertises a discount in a false or misleading manner, including but not limited to, failing to disclose the dates on which the sale or discount price will be in effect if the sale or discount price is a limited time offer.~~

~~When advertising a specific hearing aid model:~~

Correct:	50% off Acme Model 12
Regularly \$1000, Now \$500	

Incorrect:	50% off Acme hearing aid

When advertising a category of hearing aids (e.g. all models from one manufacturer, or all BTE models):

Correct:	50% off Manufacturer's Suggested Retail Price
All Acme Hearing Aids	
Incorrect:	Acme Hearing Aids - 50% Off
Correct:	50% off Manufacturer's Suggested Retail Price, All Hearing Aids Offer good January 1-7, 1998 (or Offer expires January 7, 1998)
Incorrect:	50% off Manufacturer's Suggested Retail Price, All Hearing Aids

(4) Utilizes a business name that is so broad as to connote comprehensive and diagnostic hearing services, unless the dispenser is also licensed as a physician or audiologist.

Correct:	Delta Hearing Aid Center
Incorrect:	Delta Hearing Center

(5) Advertises hearing tests without qualification as to the nature of the hearing testing that may be performed by a hearing aid dispenser.

Correct:	Test to determine if you could be helped by a hearing aid
Incorrect:	Hearing test

(6) Includes sending to a consumer preset appointment information or "rebate coupons" that resemble checks as part of a direct mail solicitation.

(7) Includes an educational degree but does not list the degree and field, or includes the title "Dr." where the degree is a non-medical doctorate and the advertisement does not disclose that fact.

Correct:	John Doe, Ph.D. in Audiology	Jane Doe, M.A. in Audiology
	John Doe, Ph.D. (Audiology)	Jack Doe, B.A. (Audiology)
Incorrect:	Dr. John Doe	Jane Doe, M.A.
	Dr. John Doe (Audiology)	Jack Doe, B.A.

(8) Includes abbreviations for job titles or job certifications as letters after a name where those letters do not represent an academic degree or credential.

(9) Refers to a dispenser's certification by a professional organization but either does not include the name of the certifying organization or, includes the name written in a manner not easily understood by consumers.

Correct:	John Doe, Hearing Aid Dispenser Lic. No. HA-xxxx
NB-HIS, Certified by the National Board of Certification in Hearing Instrument Sciences	
Incorrect:	John Doe, NB-HIS

(10) Includes the term “specialist” when referencing licensure without including the title “hearing aid dispenser.”

Correct:	Jane Doe, Hearing Aid Dispenser Lic. No. HA-xxxx
Jack Doe, Licensed Hearing Aid Dispenser	
John Doe, Hearing Instrument Specialist	
Hearing Aid Dispenser Lic. No. HA-xxxx	
Incorrect:	Jane Doe, Hearing Aid Specialist Lic. No. HA-xxxx
Jack Doe, Licensed Hearing Aid Specialist	

(c) Advertising for **the practice of fitting and/or selling hearing aids or other authorized services** by a person licensed to dispense hearing aids shall include the following information, *unless the following information is provided on an internet website and that internet website address is included in the advertising:*

(1) The address of the principal place of business of the licensee, and the address and office hours at which the licensee shall be available for fitting or post-fitting adjustments and servicing of the hearing aid(s) sold.

(2) The *name and* license number of ~~the all~~ persons licensed to dispense hearing aids *at the location advertised*, including the letters HA (Hearing Aid Dispenser), HTL (Temporary License), HT (Trainee), or AU (Dispensing Audiologist), as appropriate.

(d) In addition to advertisement prohibited under Section 651 of the Code, an advertisement for **the practice of fitting and/or selling hearing aids or other authorized services** shall not include:

(1) An educational degree that was not earned or does not specify the exact degree and field in which the degree was earned.

(2) Other than for a physician and surgeon licensed by the Medical Board of California or the Osteopathic Medical Board in this state, the title "doctor" or any

variation of this term without specifying the exact field in which the doctoral degree was earned.

(3) A job title or dispenser's certification by a professional organization that is not clearly identified by the full job title or certification and name of the certifying organization.

(4) An offer to perform a hearing test by a hearing aid dispenser that does not clearly state that the test is being performed in order to fit and sell a hearing aid.

(5) Any description of services that are required to be performed by a licensed audiologist unless there is a licensed audiologist at the advertised address to perform those services.

(6) Preset appointment information when the consumer has not requested such an appointment.

(7) The use of rebate coupons or rebate checks without informing the consumer of all the various material facts relating to the **advertised price of the hearing aid. Material facts include** standard price of the ~~device~~hearing aid, **the terms and conditions of the rebate coupon or rebate check**, and discounts or sales that are currently available on that ~~device~~hearing aid.

(e) An offer for ~~authorized~~hearing aids or services **for the fitting of hearing aids** as part of a research or field study does not violate this ~~Section~~ if no selling of hearing aids occurs in connection with the research or study.

(f) Any advertisement shall fully disclose ~~any and all additional~~ charges associated with the purchase **and fitting** of hearing aids, ~~such as additional programming of hearing aid features~~. An advertisement for price that uses a **sale, discount, or price comparison** shall be based on verifiable data ~~and that shall be provided to the Board upon request~~. **An advertisement for price that uses a sale, discount, or price comparison must** contain the following:

(1) The dollar amount of the non-discounted ~~fee or compared price~~ for the specific hearing aid or ~~provide consumers with~~ a method **for consumers** to ascertain the standard price;

(2) The dates on which the sale, ~~or discount, or price comparison~~ will be in effect if the sale, ~~or discount, or price comparison~~ is a limited time offer; and

(3) Any other terms, conditions, or restrictions imposed for qualifying for the **sale, discount, or price comparison**.

(g) The licensee shall retain the data required in subsection (f) for one year after the advertisement is published or disseminated.

(eh) Any national advertisement run in California shall comply with California laws and regulations.

(1) The advertising described in subsection (h) is exempt from the requirements of subsection (c) of this ~~S~~section.

(2) A person licensed to dispense hearing aids is subject to discipline or enforcement action for sales resulting from a national advertisement that violates this ~~S~~section.

Note: Authority cited: ~~Section~~Sections 2531.06 and 2531.95, Business and Professions Code. Reference: Sections 651, 651.3, ~~and 2533~~2538.10, and 2538.11, Business and Professions Code.

HAD Advertising Public Comments

Second 15-Day Comment Period

Comment 1

From: Mona Atashigolestan
Sent: Thursday, October 17, 2024 11:20 AM
To: SpeechandHearingRegulations@DCA
<SpeechandHearingRegulations@dca.ca.gov>
Subject: Proposed Modified Text (HAD Advertising)

I don't believe anyone with a hearing aid dispensing license can advertise the fitting and selling of hearing aids. At least it needs to be supervised by an audiologist.

Comment 2

From: Erica Mora
Sent: Tuesday, October 29, 2024 9:11 PM
To: SpeechandHearingRegulations@DCA
<SpeechandHearingRegulations@dca.ca.gov>
Subject: Proposed Modified Text (HAD Advertising)

Good evening,

After reading the materials regarding this proposal, I don't hold any opposition on the matter.

Best,

Erica Mora (RPE license number: 19638)

DEPARTMENT OF CONSUMER AFFAIRS
**TITLE 16. SPEECH-LANGUAGE PATHOLOGY AND AUDIOLOGY
AND HEARING AID DISPENSERS BOARD**

Hearing Aid Dispensing Advertising

ORDER OF ADOPTION

Amend Section 1399.127 of Article 5 of Division 13.3 of Title 16 of the California Code of Regulations to read as follows:

§ 1399.127. Advertising.

(a) A person licensed to dispense hearing aid dispenser aids may advertise for the practice of fitting or selling hearing aids any goods or services authorized to be provided by such license in a manner authorized by Section 651 of the Code and this Section soas long as suchthe advertising does not promote the unnecessary, inappropriate, or excessive-use of such hearing aidsgoods or services.

(b) An advertisement violatesfor the practice of fitting or selling hearing aids is in violation of Section 651 of the Code when if it violates any provision of Article 8, Chapter 5.3 of Division 2 of the Code, beginning with Section 2538.10.:

(1) ~~Is not exact, and any conditions or other variables to an advertised price are not disclosed.~~

(2) ~~Includes a statement of price comparison that is not based upon verifiable data.~~

(3) ~~Advertises a discount in a false or misleading manner, including but not limited to, failing to disclose the dates on which the sale or discount price will be in effect if the sale or discount price is a limited time offer.~~

~~When advertising a specific hearing aid model:~~

Correct:	50% off Acme Model 12
Regularly \$1000, Now \$500	
Incorrect:	50% off Acme hearing aid

~~When advertising a category of hearing aids (e.g. all models from one manufacturer, or all BTE models):~~

Correct:	50% off Manufacturer's Suggested Retail Price
All Acme Hearing Aids	

Incorrect:	Acme Hearing Aids – 50% Off
Correct:	50% off Manufacturer's Suggested Retail Price, All Hearing Aids Offer good January 1-7, 1998 (or Offer expires January 7, 1998)
Incorrect:	50% off Manufacturer's Suggested Retail Price, All Hearing Aids

~~(4) Utilizes a business name that is so broad as to connote comprehensive and diagnostic hearing services, unless the dispenser is also licensed as a physician or audiologist.~~

Correct:	Delta Hearing Aid Center
Incorrect:	Delta Hearing Center

~~(5) Advertises hearing tests without qualification as to the nature of the hearing testing that may be performed by a hearing aid dispenser.~~

Correct:	Test to determine if you could be helped by a hearing aid
Incorrect:	Hearing test

~~(6) Includes sending to a consumer preset appointment information or “rebate coupons” that resemble checks as part of a direct mail solicitation.~~

~~(7) Includes an educational degree but does not list the degree and field, or includes the title “Dr.” where the degree is a non-medical doctorate and the advertisement does not disclose that fact.~~

Correct:	John Doe, Ph.D. in Audiology	Jane Doe, M.A. in Audiology
	John Doe, Ph.D. (Audiology)	Jack Doe, B.A. (Audiology)
Incorrect:	Dr. John Doe	Jane Doe, M.A.
	Dr. John Doe (Audiology)	Jack Doe, B.A.

~~(8) Includes abbreviations for job titles or job certifications as letters after a name where those letters do not represent an academic degree or credential.~~

~~(9) Refers to a dispenser's certification by a professional organization but either does not include the name of the certifying organization or, includes the name written in a manner not easily understood by consumers.~~

Correct:	John Doe, Hearing Aid Dispenser Lic. No. HA-xxxx
	NB-HIS, Certified by the National Board of Certification in Hearing Instrument Sciences
Incorrect:	John Doe, NB-HIS

(10) Includes the term “specialist” when referencing licensure without including the title “hearing aid dispenser.”

Correct:	Jane Doe, Hearing Aid Dispenser Lic. No. HA-xxxx
Jack Doe, Licensed Hearing Aid Dispenser	
John Doe, Hearing Instrument Specialist	
Hearing Aid Dispenser Lic. No. HA-xxxx	
Incorrect:	Jane Doe, Hearing Aid Specialist Lic. No. HA-xxxx
Jack Doe, Licensed Hearing Aid Specialist	

(c) Advertising for the practice of fitting or selling hearing aids by a person licensed to dispense hearing aids shall include the following information, unless the following information is provided on an internet website and that internet website address is included in the advertising:

(1) The address of the principal place of business of the licensee, and the address and office hours at which the licensee shall be available for fitting or postfitting adjustments and servicing of the hearing aid(s) sold.

(2) The name and license number of all persons licensed to dispense hearing aids at the location advertised, including the letters HA (Hearing Aid Dispenser), HTL (Temporary License), HT (Trainee), or AU (Dispensing Audiologist), as appropriate.

(d) In addition to advertisement prohibited under Section 651 of the Code, an advertisement for the practice of fitting or selling hearing aids shall not include:

(1) An educational degree that was not earned or does not specify the exact degree and field in which the degree was earned.

(2) Other than for a physician and surgeon licensed by the Medical Board of California or the Osteopathic Medical Board in this state, the title "doctor" or any variation of this term without specifying the exact field in which the doctoral degree was earned.

(3) A job title or dispenser's certification by a professional organization that is not clearly identified by the full job title or certification and name of the certifying organization.

(4) An offer to perform a hearing test by a hearing aid dispenser that does not clearly state that the test is being performed in order to fit and sell a hearing aid.

(5) Any description of services that are required to be performed by a licensed audiologist unless there is a licensed audiologist at the advertised address to perform those services.

(6) Preset appointment information when the consumer has not requested such an appointment.

(7) The use of rebate coupons or rebate checks without informing the consumer of all the various material facts relating to the advertised price of the hearing aid. Material facts include standard price of the hearing aid, the terms and conditions of the rebate coupon or rebate check, and discounts or sales that are currently available on that hearing aid.

(e) An offer for hearing aids or services for the fitting of hearing aids as part of a research or field study does not violate this Section if no selling of hearing aids occurs in connection with the research or study.

(f) Any advertisement shall fully disclose all charges associated with the purchase and fitting of hearing aids. An advertisement for price that uses a sale, discount, or price comparison shall be based on verifiable data that shall be provided to the Board upon request. An advertisement for price that uses a sale, discount, or price comparison must contain the following:

(1) The dollar amount of the non-discounted or compared price for the specific hearing aid or a method for consumers to ascertain the standard price;

(2) The dates on which the sale, discount, or price comparison will be in effect if the sale, discount, or price comparison is a limited time offer; and

(3) Any other terms, conditions, or restrictions imposed for qualifying for the sale, discount, or price comparison.

(g) The licensee shall retain the data required in subsection (f) for one year after the advertisement is published or disseminated.

(eh) Any national advertisement run in California shall comply with California laws and regulations.

(1) The advertising described in subsection (h) is exempt from the requirements of subsection (c) of this Section.

(2) A person licensed to dispense hearing aids is subject to discipline or enforcement action for sales resulting from a national advertisement that violates this Section.

Note: Authority cited: Sections 2531.06 and 2531.95, Business and Professions Code.
Reference: Sections 651, 651.3, and ~~2533~~2538.10, and 2538.11, Business and Professions Code.