

DEPARTMENT OF CONSUMER AFFAIRS
TITLE 16. PROFESSIONAL AND VOCATIONAL REGULATIONS
DIVISION 13.3.

SPEECH-LANGUAGE PATHOLOGY
AND AUDIOLOGY AND HEARING AID DISPENSERS BOARD

NOTICE OF PROPOSED REGULATORY ACTION CONCERNING:
Hearing Aid Dispensing Advertising

NOTICE IS HEREBY GIVEN that the Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board (hereafter Board) is proposing to take the action described in the Informative Digest below, after considering all comments, objections, and recommendations regarding the proposed action.

PUBLIC HEARING

The Board has not scheduled a public hearing on this proposed action. However, the Board will hold a hearing if it receives a written request for a public hearing from any interested person, or his or her authorized representative, no later than 15 days prior to the close of the written comment period. A hearing may be requested by making such request in writing addressed to the individuals listed under “Contact Person” in this notice.

WRITTEN COMMENT PERIOD

Written comments relevant to the action proposed, including those sent by mail, facsimile, or e-mail to the addresses listed under “Contact Person” in this Notice, must be **received by the Board at its office no later than by Wednesday, January 3, 2024**, or must be received by the Board at the hearing, should one be scheduled.

AUTHORITY AND REFERENCE

Pursuant to the authority vested by sections 2531.06 and 2531.95 of the Business and Professions Code (BPC), and to implement, interpret, or make specific BPC section 651, the Board is considering amending section 1399.127 of title 16 of the California Code of Regulations (CCR).

INFORMATIVE DIGEST / POLICY STATEMENT OVERVIEW

The Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board (Board) is a state agency vested with the authority to license, regulate, and discipline within the practices of speech-language pathology, audiology, and hearing aid dispensing in accordance with the Business and Professions Code (BPC) sections 2530.1 and 2531.02. The Board’s mandate and its mission is to protect the public by

regulating approximately 35,000 speech-language pathologists, speech-language pathology assistants, speech-language pathology aides, audiologists, dispensing audiologists, audiology aides, hearing aid dispensers, hearing aid dispenser trainees, and temporary hearing aid dispensers who are licensed and registered with the Board and by disciplining those who violate the law. In order to protect the public, the Board requires licensees authorized to dispense hearing aids to advertise in such a way that the advertisement is not false, fraudulent, misleading, or deceptive (BPC section 651).

Existing law, under BPC sections 2531.06 and 2531.95, authorizes the Board to adopt, 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 the regulation at 16 CCR section 1399.127 that enforces BPC section 651.

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

Due to inquiries the Board has received regarding the lack of clarity in the advertising regulation for the practice of hearing aid dispensing, the Board seeks to revise the regulation to ensure that information advertised will not cause a person to misunderstand the information, be deceived by the information, or both.

The following is a summary of the proposed changes the Board seeks to make:

Amend Section 1399.127 of Article 5 of Division 13.3 of Title 16 of the CCR

This section is amended to clarify that anyone licensed to dispense hearing aids can advertise the fitting and selling of hearing aids in accordance with BPC section 651 and this section. The changes also clarify information required in advertisements, prohibited advertisement, and national advertisement disseminated in California. These changes reduce confusion and protect the public from misunderstanding information that is advertised, being deceived by an advertisement, or both.

Anticipated Benefits of Proposal

The Board is aware of benefits that may occur for businesses or individuals that comply with this regulation over its lifetime. Because the Board's authority is over licensees and not over all businesses within the industries the Board regulates, the Board cannot provide any estimates for the total number or type of businesses (e.g., private, nonprofit, public, or small business) that may be impacted by this proposed regulation. The Board anticipates over 1,300 licensees in the practice of hearing aid dispensing will be impacted by this proposed regulation.

The Board anticipates an increase in clarity, transparency, and accountability. Licensees will benefit from this regulatory proposal clarifying and making the requirements more transparent regarding advertising. The public will benefit from

licensees being held accountable in how they advertise information, especially as it relates to prices. 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.

Evaluation of Consistency and Compatibility with Existing State Regulations

During the process of developing this regulatory proposal, the Board has conducted a search of any similar regulations on these topics and has concluded that these regulations are neither inconsistent nor incompatible with existing state regulations.

INCORPORATION BY REFERENCE : None

DISCLOSURES REGARDING THIS PROPOSED ACTION

Nondiscretionary Costs/Savings to Local Agencies: None

Mandate Imposed on Local Agencies or School Districts: None

FISCAL IMPACT ESTIMATES

Cost to any Local Agency or School District for which Government Code Sections 17500 - 17630 Require Reimbursement: None

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None. The regulations do not result in a fiscal impact to the state.

This proposal clarifies provisions related to advertising to reduce confusion for licensees and consumers. The Board does not anticipate additional workload or costs resulting from the proposed regulatory change and any workload increase or costs of implementation are a result of current law.

The regulations do not result in costs or savings in federal funding to the state.

Significant Effect on Housing Costs: None

BUSINESS IMPACT ESTIMATES

The Board has made the initial determination that this proposed regulatory action will not have significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. This initial determination is based on the fact that advertising is part of business operations and the type and amount of advertising undertaken is determined by business owners.

Because the Board does not have statutory authority to establish an inspection program to verify if advertisements comply with the proposed regulatory changes, the Board is unable to determine how many businesses will be required to comply, or the cost that they may incur, to replace existing advertisements that do not comply with these proposed regulatory changes.

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.

RESULTS OF ECONOMIC IMPACT ASSESSMENT / ANALYSIS

Impact on Jobs / Businesses

This Board has determined that 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 existing law on hearing aid dispenser advertising, and does not enhance or inhibit industry growth within the industries the Board regulates.

It will not eliminate existing businesses or jobs because the proposed regulatory action is related to existing law on hearing aid dispenser advertising, and does not enhance or inhibit industry growth within the industries the Board regulates.

It will not affect the expansion of businesses within the State of California because the proposed regulatory action is related to existing law on hearing aid dispenser advertising, and does not enhance or inhibit industry growth within the industries the Board regulates.

Benefits of Regulation:

This Board has determined that this regulatory proposal will have the following effects:

It will positively affect the health and welfare of California residents. The Board anticipates an increase in clarity, transparency, and accountability. Licensees will benefit from clarity and transparency in the requirements regarding advertising. The public will benefit from licensees being held accountable in how they advertise information, especially as it relates to prices.

It will not affect worker safety because the proposed regulatory action is related to advertising, and does not concern or impact worker safety.

It will not affect the state's environment because the proposed regulatory action is related to advertising, and does not concern or impact the State's environment.

Cost Impact on Representative Private Person or Business

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Business Reporting Requirements

The regulatory action does not require businesses to file a report with the Board.

Effect on Small Business

The Board has made the initial determination that this proposed regulatory action will not have significant statewide adverse economic impact directly affecting small businesses. This initial determination is based on the fact that advertising is part of business operation and the type and amount of advertising are determined by business owners.

Because the Board does not have statutory authority to establish an inspection program to verify if advertisements comply with the proposed regulatory changes, the Board is unable to determine how many businesses will be required to make changes to comply, or the cost they may incur, to replace advertisements that do not comply with the proposed regulatory changes.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5, subdivision (a)(13), the Board must determine that no reasonable alternative it considered to the regulation or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed; would be as effective and less burdensome to affected private persons than the proposal described in this Notice; or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

Any interested person may submit comments to the Board in writing relevant to the above determinations 1601 Response Road, Suite 260 Sacramento, CA 95815 during the written comment period, or at the hearing if one is scheduled or requested.

AVAILABILITY OF STATEMENT OF REASONS AND RULEMAKING FILE

The Board has compiled a record for this regulatory action, which includes the Initial Statement of Reasons (ISOR), proposed regulatory text, and all the information on

which this proposal is based. This material is contained in the rulemaking file and is available for public inspection upon request to the contact persons named in this notice.

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations, and any document incorporated by reference, and of the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained upon request from the Board at 1601 Response Road, Suite 260 Sacramento, CA 95815.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After considering all timely and relevant comments, the Board, upon its own motion or at the request of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal, with the modifications clearly indicated, will be available for review and written comment for 15 days prior to its adoption from the person designated in this Notice as the Contact Person and will be mailed to those persons who submit written comments or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

AVAILABILITY AND LOCATION OF THE FINAL STATEMENT OF REASONS AND RULEMAKING FILE

All the information upon which the proposed regulations are based is contained in the rulemaking file which is available for public inspection by contacting the person named below.

You may obtain a copy of the Final Statement of Reasons once it has been prepared by making a written request to the Contact Person named below or by accessing the website listed below.

CONTACT PERSONS

Inquiries or comments concerning the proposed rulemaking action may be addressed to:

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|-----------------|--|
| Name: | Maria Liranzo; Legislation, Regulations, and Budget Analyst |
| Address: | Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board 1601 Response Road, Suite 260 Sacramento, CA 95815 |
| Telephone No.: | (916) 287-7915 |
| E-Mail Address: | SpeechandHearingRegulations@dca.ca.gov |

The backup contact person is:

Name: Cherise Burns, Assistant Executive Officer
Address: Speech-Language Pathology and Audiology
and Hearing Aid Dispensers Board
1601 Response Road, Suite 260
Sacramento, CA 95815
Telephone No.: (916) 287-7915
E-Mail Address: SpeechandHearingRegulations@dca.ca.gov

AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulations with modifications noted, as well as the Final Statement of Reasons when completed, and modified text, if any, can be accessed through the Board's website at

https://www.speechandhearing.ca.gov/board_activity/lawsregs/proposed_regulations.shtml