

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

INITIAL STATEMENT OF REASONS

Hearing Date

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

Subject Matter of Proposed Regulations

Continuing Education Requirements for Hearing Aid Dispensers

Sections Affected

Sections 1399.140, 1399.140.1, and 1399.144 of Article 7 of Division 13.3 of Title 16 of the California Code of Regulations (CCR).¹

Background and Statement of the Problem

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 licensees or registrants who violate the law. In order to protect the public, the Board establishes requirements for continuing education (CE) to assure the public of professional competence for licensees who sell or fit hearing aids (BPC section 2538.18.)

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 regulations regarding CE requirements for hearing aid dispensers.

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

¹ All CCR references are to Title 16 unless otherwise noted

The CE requirements for hearing aid dispensers are intended to protect consumers by ensuring licensees continue to improve their professional learning to maintain ethical and competent practice. The Board establishes requirements regarding the courses of study licensees can pursue to inform themselves of current practices related to the fitting of hearing aids after receiving their license pursuant to BPC section 2538.18. Because experienced dispensers may be sufficiently informed on the current practices related to direct patient/client care due to having to renew annually, the Board found it reasonable to allow licensees greater flexibility in completing their CE hours. The proposed changes will increase the number of hours that can be obtained in indirect client care or related courses, permit other opportunities to fulfil CE requirements, and clarify current regulations by making CE requirements consistent with the Board's CE audit process and existing professional learning requirements this Board has for licensees in the practices of speech-language pathology and audiology under Article 11 of Division 13.4.

Purpose, Rationale, and Anticipated Benefits

Amend Section 1399.140 of Article 7 of Division 13.3 of Title 16 of the CCR

Purpose: Subsection (a) is amended to remove outdated language, add a cross reference to CCR section 1399.144, which discusses the exemptions from CE requirements, and specify the license type as permanent licensed hearing aid dispenser by cross-referencing to BPC section 2538.26.

Rationale and Anticipated Benefits: Removing outdated language reduces confusion and increases clarity because it is no longer necessary for the Board to specify a license expiration year. The changes being made will not be burdensome for licensees to comply with once it is finalized and approved because the Board is clarifying and broadening current requirements, and not creating a new restriction or limitation. Adding a cross reference to exemptions from CE requirements increases the transparency of the Board's renewal process by informing licensees that there are exceptions from the CE requirements for reasons of health, military services, and undue hardship. A cross-reference is used to avoid unnecessary duplication of requirements in accordance with the California Administrative Procedure Act. Specifying the license type is necessary because the Board has other license types in the practice of hearing aid dispensing that must be renewed.

Purpose: Subsection (a)(1) is amended to revise sentences, make grammatical corrections, and increase the number of hours that can be obtained from courses with content not related to direct patient/client care.

Rationale and Anticipated Benefits: Revising sentences in the section and making grammatical corrections that are necessary to align the section with the Board's CE audit process increase clarity and transparency to the Board's renewal process. As a condition of renewal, licensees certify that they have met the required CE hours on their renewal

form. The Board verifies the completion of hours through a CE audit. During a CE audit, the Board requests from the licensee being audited course completion documents for the renewal cycle being audited, at which point the licensee will “claim” to the Board the courses they have completed. Using the course completion documents, the claim is reviewed by Board staff to determine compliance with the CE requirements in terms of total number of hours obtained, CE provider status, and whether the course content meets the requirements established by the Board. The Board found it reasonable to allow licensees greater flexibility to complete their CE in indirect client care or related courses because experienced dispensers may be sufficiently informed on the current practices related to direct patient/client care as a result of having to renew annually. The Board determined at its May 2022 meeting that increasing the number of hours from three (3) to four (4) was reasonable as it continues to limit the number of hours for courses with content not related to direct patient/client care. Continuing to limit the number of hours for these types of courses is necessary to ensure professional learning is predominantly related to direct patient/client care and not on related practice subjects such as managed care issues or service delivery models.

Purpose: Subsection (a)(2)(A) is amended to revise sentence structures and make grammatical corrections.

Rationale and Anticipated Benefits: The Board is revising sentences and making grammatical corrections for the same rationale and anticipated benefits as explained above concerning the similar changes made in subsection (a)(1)(A).

Purpose: Subsection (a)(3) is added to allow licensees to claim no more than six (6) hours from courses related to hearing aid equipment, devices, or other products.

Rationale and Anticipated Benefits: The Board found it reasonable to allow licensees greater flexibility to complete their CE hours because experienced dispensers may be sufficiently informed on the current practices related to direct patient/client care as a result of having to renew annually. The Board determined at its August 2022 meeting that experienced dispensers may benefit from learning about the equipment, devices, or other products their patients or clients use as advancements in technology are common in this practice. Limiting the number of CE hours that can be claimed to six (6) hours is necessary as it ensures professional learning is primarily related to direct patient/client care and not on fitting, programming, and troubleshooting hearing aid equipment, devices, or other products. A cross-reference to section 1399.140.1 is used to avoid unnecessary duplication of requirements in accordance with the California Administrative Procedure Act.

Purpose: Subsection (c) is amended to replace gendered pronouns with gender-neutral terms.

Rationale and Anticipated Benefits: This is a change without regulatory effect because the amendments are grammatical in nature. Changing gendered terms to gender-neutral

terms parallels other efforts throughout the state and is based on Assembly Concurrent Resolution No. 260 of 2018 (ACR 260) which resolved that “state agencies should ... use gender-neutral pronouns and avoid the use of gendered pronouns when drafting policies, regulations, and other guidance.”

Purpose: Subsection (e) is removed.

Rationale and Anticipated Benefits: This subsection is removed because the Board does not have the authority to waive CE requirements for first time renewals. Hearing aid dispensers must inform themselves of current practices related to the fitting of hearing aids after receiving their license pursuant to BPC section 2538.18. The Board doesn’t find it necessary to provide a different CE requirement for first time renewals, such as half of required CE hours, because every licensee has a full one-year period to complete their requirements regardless of if it’s the licensee’s first, second, or subsequent renewal.

Purpose: Subsection (f) is renumbered to subsection (e) and amended to clarify the requirement that a person whose license has been expired for two renewal cycles or more must complete CE requirements for the most recent renewal cycle before the license can be restored.

Rationale and Anticipated Benefits: These clarifications are necessary because the Board is unable to renew a license without the licensee informing themselves of current practices related to the fitting of hearing aids after receiving their license pursuant to BPC section 2538.18. CE requirements are based on renewal periods and as such, the two-year requirement is being amended to say two renewal periods. The Board determined at its meeting on April 27, 2023, that it would be burdensome for a person to complete hours for two or more renewal cycles before the Board restores their license. Therefore, the Board will require licensees with an expired license to complete the required CE hours for the most recent renewal period.

Purpose: Subsection (f) is added to clarify that applicants who are licensed to practice outside of California and become licensed in California are not required to complete the CE requirements until their first renewal.

Rationale and Anticipated Benefits: Adding this subsection is necessary to make professional learning requirements consistent with requirements the Board has for licensees in the practices of speech-language pathology and audiology under section 1399.160.13. An applicant for initial licensure may have accrued CE hours to satisfy requirements to be licensed in another state. This subsection clarifies that they are not required to provide such information to the Board until their first renewal.

Purpose: Subsection (g) is added to allow licensees who teach a Board approved course to claim CE for the same number of hours earned by licensees who took the course they taught.

Rationale and Anticipated Benefits: Adding this subsection is necessary to make professional learning requirements consistent with requirements the Board has for licensees in the practices of speech-language pathology and audiology under section 1399.160.13. A licensee spends time, effort, and resources to prepare for and present a course. For this reason, the Board determined at its May 2022 meeting that it is reasonable to allow HAD licensees to claim CE hours for the courses they teach the same as if they were an attendee of that course.

The Board recognizes that the same course may be taught or offered more than once; therefore, the Board limits the number of hours earned by teaching to once per renewal. This will ensure professional learning also occurs in other areas or topics within the practice of hearing aid dispensing.

Purpose: Subsection (h) is added to allow licensees who participate in the development or administration of the Board's examination to claim CE for up to two (2) hours per day and no more than four (4) hours per renewal period.

Rationale and Anticipated Benefits: The Board recognized at its May 2022 meeting that licensee's time and effort are used to aid the Board in developing or administering the examinations required for licensure. BPC section 139 requires state licensing boards to conduct occupational analyses and examination validation studies of licensure programs. As part of the occupational analysis, the Board holds workshops with licensees to determine the tasks and knowledge needed for independent practice. This helps the Board to review and validate the examination it requires for licensure. The Board also holds examinations that require actual demonstration of the knowledge and techniques for using the instruments and equipment necessary for the practice of hearing aid dispensing, and as such requires subject matter experts, like licensees, to be examiners. For this reason, the Board found it reasonable to allow licensees who aid the Board in such task to claim CE hours. Because of the duration required to participate in such tasks, the Board found it necessary to limit the number of hours that can be earned to two (2) hours per day and no more than four (4) hours per renewal period to ensure professional learning also occurs in other areas or topics within the practice of hearing aid dispensing. Requiring the licensee to maintain record of their hours served ensures documentation for the purpose of compliance as stated in subsection (c).

Purpose: Subsection (i) is added to clarify that any educational course required as a result of a disciplinary action by the Board may not be used by the licensee to fulfil their CE hours requirement.

Rationale and Anticipated Benefits: Adding this subsection is necessary to make professional learning requirements consistent with requirements the Board has for licensees in the practices of speech-language pathology and audiology under section 1399.160.13. Educational course is a term and condition used in connection with a decision on a disciplinary action that requires the disciplined licensee to complete coursework related to the violation for which they are being disciplined. It is necessary to

clarify that educational courses taken due to a disciplinary action against the licensee are not applicable to the CE requirements because the purpose of an educational course required due to a disciplinary action is to educate licensees who failed to demonstrate competencies in the functions and duties related to their licensed practice, whereas the CE hour requirements for renewal are for licensees to stay informed of current practices related to the fitting of hearing aids.

Purpose: Subsection (j) is added to allow licensees to claim no more than two (2) hours for participating in the Board's occupational analyses.

Rationale and Anticipated Benefits: BPC section 139 requires state licensing boards to conduct occupational analyses and examination validation studies of licensure programs. As part of the occupational analysis, the Board surveys its licensed population to determine the tasks and knowledge needed for independent practice through an online survey questionnaire which can take approximately two hours to complete. This survey helps the Board review and validate the examination it requires for licensure. For this reason, the Board finds it prudent to allow for its licensees to claim CE hours to complete the entire survey. Two (2) hours is a reasonable number of hours to offer for completion of the survey, given it takes approximately two hours to complete the survey.

Amend Section 1399.140.1 of Article 7 of Division 13.3 of Title 16 of the CCR

Purpose: Subsection (a) is amended to remove the restrictions to courses related to hearing aid equipment, devices, or other products and make grammatical corrections.

Rationale and Anticipated Benefits: The Board found it reasonable to allow licensees greater flexibility to complete their CE hours because experienced dispensers may be sufficiently informed on the current practices related to direct patient/client care as a result of having to renew annually. The Board determined at its August 2022 meeting that experienced dispensers may benefit from learning about the equipment, devices, or other products their patients/clients use, as advancements in technology are common in this practice. As such, the Board is now allowing CE hours for such courses. Making grammatical corrections increases clarity by re-aligning the information in this subdivision into paragraphs (1), (2), and (3).

Purpose: Subsection (a) (1) is amended to make it acceptable to earn CE hours from courses with content related to hearing aid equipment, devices, or other products.

Rationale and Anticipated Benefits: The Board found it reasonable to allow licensees greater flexibility to complete their CE hours because experienced dispensers may be sufficiently informed on the current practices related to direct patient/client care due to having to renew annually. The Board determined at its August 2022 meeting that experienced dispensers may benefit from learning about the equipment, devices, or other products their patients/clients use, as advancements in technology are common in this practice. As such, the Board expanded the definition of direct patient/client care

courses to include content related to hearing aid equipment, devices, or other products. To ensure that courses are in direct patient/client care, the Board is specifying that it must benefit the patient/client.

Purpose: Subsection (a)(2) is amended to make grammatical correction.

Rationale and Anticipated Benefits: This maintains consistency in the writing style used throughout regulations and are without regulatory affect.

Purpose: Subsection (b) is amended to create paragraph (1) from existing language and add paragraph (2) to make unacceptable a course with content related to marketing, launching, or demonstrating the marketability of hearing aid equipment, devices, or other products.

Rationale and Anticipated Benefits: The Board found it reasonable to allow licensees greater flexibility to complete their CE hours because experienced dispensers may be sufficiently informed on the current practices related to direct patient/client care due to having to renew annually. The Board determined at its August 2022 meeting that experienced dispensers may benefit from learning about the equipment, devices, or other products their patients/clients use, as advancements in technology are common in this practice. However, the Board determined that such courses should not focus on marketing, launching, or demonstrating the marketability of hearing aid equipment, devices, or other products because dispensers must maintain ethical practices when providing services to patients/clients. Dispensers should have no interest in selling particular hearing aid equipment, devices, or other products as such items should be selected to achieve a safe, comfortable, and effective hearing experience for the patient's/client's everyday living. When dispensers are taught on how to market a particular hearing aid product to their patient/client, this may create a conflict-of-interest by putting the equipment, devices, or other products before their patient/client's individual hearing needs.

Amend Section 1399.144 of Article 7 of Division 13.3 of Title 16 of the CCR

Purpose: The title is amended to replace “Waiver of Requirement” with “Exemptions from Continuing Education.”

Rationale and Anticipated Benefits: This change increases clarity about the content that is contained in this section. Exemption is an appropriate word to use because the Board uses the word “waiver” to mean the authority that is given to the Department of Consumer Affairs during a state of emergency.

Purpose: Subsection (a) is amended to remove the current information to specify exemptions from CE requirements if the licensee renews and places their license in inactive status.

Rationale and Anticipated Benefits: Removing the current information is necessary because it is not clear as currently written. The proposed regulation will clarify the exemption from CE requirements for reasons of health, military service, or undue hardship with specific requirements to request an exemption in subsection (b). This subsection will specify exemptions from CE requirements if the licensee renews their license in the inactive status as required by BPC section 703. The change will also align with exemptions this Board has for licensees in speech-language pathology and audiology practices under section 1399.160.2 to maintain consistency.

Purpose: Subsection (b) is added to specify what is required to request an exemption from the CE requirements for hearing aid dispensers.

Rationale and Anticipated Benefits: This change is necessary for consistency. The Board specifies similar requirements for the practices of speech-language pathology and audiology under CCR section 1399.160.2. Requiring licensees to submit their request in writing is necessary as the Board will not be able to make a determination without information on the reason for the exemption. Requiring the Board to notify the licensee within thirty (30) working days about the status of their request prevents delay in making a determination and informing the licensee of the determination prior to the licensee's license expiration date. Thirty (30) working days is a reasonable amount of time to allow Board staff to review the request and any evidence provided. Requiring the licensee to provide evidence to the Board is necessary as the Board will need to verify that the information provided in the request is true and correct.

Purpose: Paragraph (1) is added to exempt licensees from CE requirements if they were called to active duty as a member of the United States Armed Forces or the California National Guard for any amount during their previous license renewal period.

Rationale and Anticipated Benefits: This is added pursuant to BPC section 114.3, which requires the Board to "waive the renewal fees, continuing education requirements, and other renewal requirements" for licensees called to active duty as a member of the United States Armed Forces or the California National Guard.

Purpose: Paragraph (2) is added to exempt licensees from CE requirements if they lived in another country for at least one year during their last renewal period.

Rationale and Anticipated Benefits: Adding this exemption is necessary for the purpose of consistency. The Board has this exemption for licensees in the practices of speech-language pathology and audiology under CCR section 1399.160.2. Licensees residing outside of the United States are not a risk to public safety in California as they are not providing services to patients/clients within California. For this reason, the Board found it reasonable to clarify that licensees in this situation are exempt from CE requirements. Requiring that absence to be at least one year is a reasonable amount of time because this is the amount of time for each renewal period.

Purpose: Paragraph (3) is added to exempt licensees from the CE requirements if they were suffering or suffered from a disability or are taking care of an immediate family member who was suffering or suffered from a disability. The term “disability” is defined, and requires verification from a licensed physician or psychologist with information specified in subparagraphs (A), (B), and (C). Subparagraph (A) is added to require the verification to state the nature and extent of the disability. Subparagraph (B) is added to require the verification to explain how the disability prevented the licensee from completing the CE requirements. Subparagraph (C) is added to require the verification to include the licensed physician’s or psychologist’s name, title, address, telephone number, license or certification number, and signature.

Rationale and Anticipated Benefits: Adding this exemption is necessary for the purpose of consistency. The Board has this exemption for licensees in the practices of speech-language pathology and audiology under CCR section 1399.160.2. The Board also recognizes that suffering from disability or taking care of an immediate family member with a disability could make fulfilling the CE requirements a hardship. For this reason, the Board is specifying requirements to request an exemption under those circumstances. Because the Americans with Disabilities Act (ADA) protects both the licensees and their immediate family members from being discriminated against due to a disability, the Board is defining “disability” similar to how it used in the ADA. Requiring the licensee to provide verification from a licensed physician or psychologist with specific information is reasonable as the Board needs to verify that the information provided in the request is true and correct. The Board requires that a licensed physician or psychologist state the nature and extent of the disability and how the disability prevented the licensee from completing the CE requirements because the Board needs a professional opinion to make an informed decision. In the event the Board needs to contact the licensed professional, it can do so with the address or phone number provided. The Board can verify that the licensed professional is in good standing with their licensing or certifying board using the license or certification number provided or report them to their licensing board if they provide false information. A signature tends to confirm that the information provided is true, and correct.

Purpose: Subsection (c) is added to specify that any CE exemption granted is effective for the current renewal period.

Rationale and Anticipated Benefits: Specifying that any CE exemption granted is effective for the current renewal period is necessary to allow the Board to review exemptions on a regular basis and ensure they are properly granted for causes listed in this section.

Purpose: Subsection (b) is renumbered to subsection (d) and amended to replace “an application for a waiver” with “a written request for exemption.”

Rationale and Anticipated Benefits: This change is necessary as the Board does not have an application or form for licensees to use to request an exemption.

Underlying Data

1. May 2021 Board Meeting Agenda, relevant materials, and Minutes
2. October 2021 Board Meeting Agenda, relevant materials, and Minutes
3. May 2022 Board Meeting Agenda, relevant materials, and Minutes
4. August 2022 Board Meeting Agenda, relevant materials, and Minutes
5. Board's Sunset Review Report 2021
6. April 2023 Board Meeting Agenda, relevant materials, and Minutes

Business Impact

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 the Board is clarifying and broadening current regulations by making CE requirements for hearing aid dispensers consistent with the Board's audit process and making professional learning requirements consistent across all types of licenses and registrations that the Board regulates, and increasing access to different CE opportunities.

The Board is not aware of any costs that businesses or individuals may incur to comply with this regulation over its lifetime nor of any other economic costs. The Board is also not aware of any effect this 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 occur for businesses or individuals to 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 licensees will benefit from greater access to different CE opportunities such as different course content and CE hours for service to the Board or teaching a course. The public will benefit from enhanced services because their licensed dispensers will have increased knowledge on the equipment, devices, or other products used by their patients/clients to optimize their hearing while in different listening environments. 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 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 CE requirements for license renewal, 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 CE requirements for license renewal, 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 CE requirements for license renewal, and does not enhance or inhibit industry growth within the industries the Board regulates.

It will positively affect the health and welfare of California residents. The public will benefit from enhanced services because their licensed hearing aid dispensers will have increased knowledge on the equipment, devices, or other products used by their patients/client to optimize their hearing while in different listening environments. Licensees will benefit from greater access to different CE opportunities such as different course content and CE hours for service to the Board or teaching a course.

It will not affect worker safety because the proposed regulatory action is related to CE requirements for license renewal, and does not concern or impact worker safety.

It will not affect the state's environment because the proposed regulatory action is related to CE requirements for license renewal, and does not concern or impact the state's environment.

Specific Technologies or Equipment

This regulatory proposal 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.

No such alternatives have been proposed, however, the Board welcomes comments from the public.