

AMENDED IN SENATE AUGUST 20, 2010

AMENDED IN SENATE AUGUST 17, 2010

AMENDED IN SENATE AUGUST 2, 2010

AMENDED IN SENATE JUNE 9, 2010

AMENDED IN ASSEMBLY APRIL 27, 2010

AMENDED IN ASSEMBLY APRIL 13, 2010

AMENDED IN ASSEMBLY APRIL 5, 2010

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 2072

Introduced by Assembly Member Mendoza

February 18, 2010

An act to add Sections 124121 and 124122 to the Health and Safety Code, relating to public health.

LEGISLATIVE COUNSEL'S DIGEST

AB 2072, as amended, Mendoza. Hearing screening: resources and services.

Existing law, the Newborn and Infant Hearing Screening, Tracking, and Intervention Act, requires every general acute care hospital with licensed perinatal services to offer every newborn a hearing screening test for the identification of hearing loss, as specified, and provide written information on the availability of community resources and services for children with hearing loss to the parents of those who are diagnosed with a hearing loss.

Existing law, the California Early Intervention Services Act, commonly known as the Early Start Program, provides various early intervention services for infants and toddlers who have disabilities to enhance their development and to minimize the potential for developmental delays.

This bill would also require that the State Department of Education develop an informational pamphlet, as specified, for newborns and infants identified as deaf or hard of hearing, that is about visual and auditory communication and language options and that would help a parent make informed decisions for his or her child. This bill would require the department to convene an advisory stakeholder panel, composed as prescribed, to develop and revise the informational pamphlet, as specified, until January 1, 2017. This bill would require that the informational pamphlet be provided to parents of all newborns and infants identified as deaf or hard of hearing by an audiologist immediately upon identification of a newborn or infant as deaf or hard of hearing, and by a local provider for the Early Start Program upon initial contact with the parents of a newborn or infant newly identified as deaf or hard of hearing. *This bill would require the audiologist to note in the newborn's or infant's record that the parent has received the informational pamphlet and, during the course of evaluation and treatment, to inform and counsel the parent of all available communication options.* This bill would require the informational pamphlet to be made available in Cantonese, English, Spanish, and Vietnamese, and be made available on the department's Internet Web site, as prescribed.

This bill would provide that these provisions would be implemented only upon determination by the Director of Finance that sufficient donations have been collected and deposited into the Language and Communication for Deaf and Hard of Hearing Children Fund, which this bill would create in the State Treasury, and upon the appropriation of that fund. This bill would provide that no state funds shall be used to implement these provisions.

This bill would also state the intent of the Legislature that every newborn or infant who does not pass his or her preliminary hearing screening test receive a followup hearing screening no later than 3 months of age, and that the Legislature strongly encourages the State Department of Health Care Services to work toward this goal.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 124121 is added to the Health and Safety
2 Code, to read:

3 124121. (a) The department shall develop an unbiased,
4 comprehensive, evidence-based informational pamphlet for
5 newborns and infants identified as deaf or hard of hearing about
6 visual and auditory communication and language options including,
7 but not limited to, American Sign Language (ASL), and Listening
8 and Spoken Language, that would help a parent make informed
9 decisions for his or her child. The pamphlet shall take into account
10 the different values and beliefs of the parents of deaf and hard of
11 hearing children. The pamphlet shall contain both benefits and
12 risks of all options, convey educational attainment outcomes, and
13 clearly convey that those options may be used simultaneously. The
14 pamphlet shall also include information about educational programs
15 for children provided by local educational agencies, the California
16 Schools for the Deaf, nonpublic schools and agencies, and
17 parent-to-parent support resources through the local family resource
18 centers.

19 (b) A parent of a newborn or infant identified as deaf or hard
20 of hearing shall be provided the informational pamphlet developed
21 pursuant to subdivision (a). The pamphlet shall be provided:

22 (1) By an audiologist immediately upon identification of a
23 newborn or infant as deaf or hard of hearing. The audiologist shall
24 ~~not inform or counsel a parent toward a particular option beyond~~
25 ~~the scope of his or her practice. *note in the newborn's or infant's*~~
26 *record that the parent has received the informational pamphlet.*
27 *During the course of evaluation and treatment, the audiologist*
28 *shall inform and counsel the parent of all available communication*
29 *and language options as described in the pamphlet.*

30 (2) By a local provider for the Early Start Program, provided
31 for pursuant to the California Early Intervention Services Act (Title
32 14 (commencing with Section 95000) of the Government Code)
33 upon initial contact with the parents of a newborn or infant newly
34 identified as deaf or hard of hearing.

35 (c) (1) The department shall convene an advisory stakeholder
36 panel to contribute to the development of the informational
37 pamphlet required pursuant to subdivision (a). The members of

1 the panel shall receive no compensation for their services. The
2 panel shall be composed of ~~13~~ 15 members, as follows:

3 (A) An adult who is deaf or hard of hearing, and who uses
4 auditory-oral language, appointed by the Governor.

5 (B) An adult who is deaf or hard of hearing, and who uses ~~visual~~
6 ~~language, including, but not limited to,~~ ASL, appointed by the
7 Governor.

8 (C) An educator of the deaf in an auditory-oral educational
9 setting, appointed by the Senate Committee on Rules.

10 (D) An educator of the deaf in ~~a visual language, including, but~~
11 ~~not limited to,~~ an ASL education setting, appointed by the Senate
12 Committee on Rules.

13 (E) A parent representative of a child who primarily uses
14 auditory-oral communication methods, appointed by the Governor.

15 (F) A parent representative of a child who primarily uses ~~visual~~
16 ~~language, including, but not limited to,~~ ASL, appointed by the
17 Governor.

18 (G) A representative of a nonprofit organization that services
19 primarily auditory-oral learners, appointed by the Speaker of the
20 Assembly.

21 (H) A representative of a nonprofit organization that services
22 primarily ~~visual language, including, but not limited to,~~ ASL
23 learners, appointed by the Speaker of the Assembly.

24 (I) A researcher engaged in the study of auditory-oral
25 communication for persons who are deaf or hard of hearing,
26 appointed by the Governor.

27 (J) A researcher engaged in the study of ~~visual language,~~
28 ~~including, but not limited to,~~ ASL, ASL and communication
29 modalities for persons who are deaf or hard of hearing, appointed
30 by the Governor.

31 (K) *Two adults who are deaf or hard of hearing, and who*
32 *primarily use other visual communication modalities, appointed*
33 *by the Governor.*

34 ~~(K)~~

35 (L) An audiologist who specializes in evaluating and treating
36 infants, appointed by the Speaker of the Assembly.

37 ~~(L)~~

38 (M) A physician who specializes in pediatric otolaryngology,
39 appointed by the Senate Committee on Rules.

40 ~~(M)~~

1 (N) The Superintendent of Public Instruction, or his or her
2 designee, who shall be an ex officio member.

3 (2) *At least five members of the panel appointed by the*
4 *Governor, one member appointed by the Senate Committee on*
5 *Rules, and one member appointed by the Speaker of the Assembly,*
6 *shall be deaf or hard of hearing adults.*

7 ~~(2)~~

8 (3) (A) All members of the panel shall be appointed no later
9 than January 1, 2012. An appointee to the panel shall not serve for
10 more than five years.

11 (B) A member of the panel shall not have a financial relationship
12 or a conflict of interest with any entity that has contributed funding
13 pursuant to subdivision (f).

14 (3) (A) Subject to subdivision (f), the panel shall commence
15 operations on January 1, 2012. The panel shall provide
16 recommendations to be included in the pamphlet developed
17 pursuant to subdivision (a) six months after the panel commences
18 operations. The panel shall hold meetings at the department's
19 headquarters and the number of meetings shall not exceed six in
20 this six-month period.

21 (B) Every two years thereafter, the department shall review the
22 pamphlet and shall revise the information, if the department
23 determines that new or revised information is necessary. At the
24 request of the department, the panel may be asked to reconvene
25 to review updates and changes to the pamphlet. The panel shall
26 then have three months to review and provide additional
27 recommendations to the department. The panel shall hold meetings
28 at the department's headquarters and the number of meetings shall
29 not exceed three in this three-month period.

30 (4) The department and the panel shall consider written input
31 and information submitted by members of the general public in
32 the creation of the pamphlet.

33 (d) The panel shall remain in existence until January 1, 2017.

34 (e) The pamphlet developed pursuant to subdivision (a) shall
35 be made available in Cantonese, English, Spanish, and Vietnamese.
36 The pamphlet developed pursuant to subdivision (a) shall be made
37 available on the department's Internet Web site. The department
38 shall make available on its Internet Web site a video where the
39 text of the pamphlet developed pursuant to subdivision (a) is
40 presented in ASL with captioning in written English.

1 (f) (1) There is hereby created the Language and
 2 Communication for Deaf and Hard of Hearing Children Fund in
 3 the State Treasury. The fund shall contain donations that have been
 4 collected and deposited for the purposes of this section, as well as
 5 any federal funds made available for purposes of this section.
 6 Notwithstanding Section 16305.7 of the Government Code, the
 7 fund shall also contain any interest and dividends earned on moneys
 8 in the fund. *No entity or individual may contribute moneys to this*
 9 *fund that has a commercial interest related to communication*
 10 *options, or products for the deaf or hard of hearing. A donor shall*
 11 *disclose any commercial interests at the time the donor’s donation*
 12 *is remitted to the State Treasury. Nothing in this subdivision shall*
 13 *be construed to preclude a tax-exempt non-profit organization,*
 14 *qualified under Section 501 (c) (3) of the Internal Revenue Code*
 15 *from donating to this fund.* No state funds shall be used to
 16 implement this section.

17 (2) Subject to paragraph (3), moneys in the Language and
 18 Communication for Deaf and Hard of Hearing Children Fund shall
 19 be available, upon appropriation by the Legislature, for the
 20 implementation of this section.

21 (3) No moneys shall be expended from the fund until the
 22 Director of Finance determines that sufficient money is in the fund
 23 to implement this section. If sufficient money is in the fund, the
 24 Director of Finance shall file a written notice thereof with the
 25 Secretary of State. Subdivisions (a) to (e), inclusive, shall not be
 26 implemented until moneys in the fund are appropriated for purposes
 27 of this section.

28 (g) Notwithstanding subdivision (c) of Section 124116, as used
 29 in this section, “department” means the State Department of
 30 Education.

31 SEC. 2. Section 124122 is added to the Health and Safety Code,
 32 to read:

33 124122. It is the intent of the Legislature that every newborn
 34 and infant who does not pass his or her preliminary hearing
 35 screening test receive a followup hearing screening no later than
 36 three months of age. The Legislature strongly encourages the
 37 department to work toward this goal.

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BILL ANALYSIS

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CONCURRENCE IN SENATE AMENDMENTS
AB 2072 (Mendoza)
As Amended August 20, 2010
Majority vote

ASSEMBLY:	(April 29,	SENATE: 23-11 (August 24,
	2010)	2010)

(vote not relevant)

Original Committee Reference: HEALTH

SUMMARY : Requires the California Department of Education (CDE), with the assistance of an advisory stakeholder panel, to develop an informational pamphlet about visual and auditory communication and language options for newborns and infants identified as deaf or hard of hearing to allow a parent to make an informed decision on which options to choose for his or her child.

The Senate amendments delete the Assembly version of this bill, and instead:

- 1) Require CDE to develop an unbiased, comprehensive, evidenced-based informational pamphlet about visual and auditory communication and language options for newborns and infants identified as deaf or hard of hearing including, but not limited to, American Sign Language (ASL), and Listening and Spoken Language.
- 2) Require the pamphlet to take into account the different values and beliefs of the parents of deaf and hard of hearing children and to contain both benefits and risks of all options, convey educational attainment outcomes, and clearly convey that those options may be used simultaneously.
- 3) Require the pamphlet to also include information about educational programs for children provided by local educational agencies, the California Schools for the Deaf, nonpublic schools and agencies, and parent-to-parent support resources through the local family resource centers.
- 4) Require a parent of a newborn or infant identified as deaf or hard of hearing to be provided the informational pamphlet

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referenced in 1), 2), and 3) above. Require the pamphlet to be provided to parents under the following circumstances:

- a) By an audiologist immediately upon identification of a newborn or infant as deaf or hard of hearing; and,
- b) By a local provider for the Early Start Program, provided under to the California Early Intervention Services Act upon initial contact with the parents of a newborn or infant newly identified as deaf or hard of hearing.
- 5) Require the audiologist to note in the newborn's or infant's record that the parent has received the informational pamphlet. Requires the audiologist, during the course of evaluation and treatment, to inform and counsel the parent of all available communication and language options as described in the pamphlet.
- 6) Require CDE to convene an advisory stakeholder panel to contribute to the development of the informational pamphlet. Prohibit the members of the panel from receiving compensation for their services. Require the panel to be composed of 15 members, as follows:
 - a) An adult who is deaf or hard of hearing, and who uses auditory-oral language, appointed by the Governor;
 - b) An adult who is deaf or hard of hearing, and who uses ASL, appointed by the Governor;
 - c) An educator of the deaf in an auditory-oral educational setting, appointed by the Senate Committee on Rules;
 - d) An educator of the deaf in an ASL education setting, appointed by the Senate Committee on Rules;
 - e) A parent representative of a child who primarily uses

auditory-oral communication methods, appointed by the Governor;

- f) A parent representative of a child who primarily uses ASL, appointed by the Governor;
- g) A representative of a nonprofit organization that services primarily auditory-oral learners, appointed by the

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Speaker of the Assembly;

- h) A representative of a nonprofit organization that services primarily ASL learners, appointed by the Speaker of the Assembly;
 - i) A researcher engaged in the study of auditory-oral communication for persons who are deaf or hard of hearing, appointed by the Governor;
 - j) A researcher engaged in the study of ASL and communication modalities for persons who are deaf and hard of hearing, appointed by the Governor; and,
 - aa) Two adults who are deaf or hard of hearing, and who primarily use other visual communication modalities, appointed by the Governor;
 - bb) An audiologist who specializes in evaluating and treating infants, appointed by the Speaker of the Assembly;
 - cc) A physician who specializes in pediatric otolaryngology, appointed by the Senate Committee on Rules; and,
 - dd) The Superintendent of Public Instruction, or his or her designee, who is required to be an ex officio member.
- 7) Require, at least five members of the panel appointed by the Governor, one member appointed by the Senate Committee on Rules, and one member appointed by the Speaker of the Assembly, to be deaf or hard of hearing.
- 8) Require all members of the panel referenced in 5) above to be appointed no later than January 1, 2012 and serve no more than five years.
- 9) Prohibit a member of the panel from having a financial relationship or a conflict of interest with any entity that has contributed funding pursuant to 12) below.
- 10) Require the panel to commence operations on January 1, 2012. Require the panel to provide recommendations to be included in the pamphlet developed six months after the panel commences operations. Require the panel to hold meetings at CDE headquarters and the number of meetings is required not to

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exceed six in this six-month period. Require, every two years thereafter, CDE to review the pamphlet and revise the information, if CDE determines that new or revised information is necessary. Permit, at the request of CDE, the panel to be reconvened to review updates and changes to the pamphlet. Require the panel three months to review and provide additional recommendations to CDE. Require the panel to hold meetings at the CDE headquarters and the number of meetings is required not to exceed three in this three-month period.

- 11) Require CDE and the panel to consider written input and information submitted by members of the general public in the creation of the pamphlet.
- 12) Require the panel to remain in existence until January 1, 2017.
- 13) Require the pamphlet to be made available in Cantonese, English, Spanish, and Vietnamese. Require the pamphlet to be made available on CDE's Internet Web site. Require CDE to make available on its Internet Web site a video where the text of the pamphlet developed pursuant to this bill is presented in ASL with captioning in written English.
- 14) Create the Language and Communication for Deaf and Hard of

Hearing Children Fund in the State Treasury (Fund). Require the Fund to contain donations that have been collected and deposited for the purposes of implementing the provision of this bill, as well as any federal funds made available for purposes of this bill. Require the Fund to contain any interest and dividends earned on moneys in the Fund.

15) Prohibit an entity or individual from contributing moneys to this fund that has a commercial interest related to communication options, or products for the deaf or hard of hearing. Requires a donor to disclose any commercial interest at the time of the donor's donation is remitted to the State Treasury. Prohibit the provisions in this bill from being construed to preclude a tax-exempt non-profit organization, qualified under the Internal Revenue Code from donating to this fund.

16) Prohibit state funds from being used to implement the provisions of this bill.

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17) Require moneys in the Fund to be available, upon appropriation by the Legislature, for the implementation of the provisions of this bill.

18) Prohibit moneys from being expended from the Fund until the Director of Finance determines that sufficient money is in the Fund to implement the provisions of this bill. Require that, if sufficient money is in the Fund, the Director of Finance to file a written notice thereof with the Secretary of State.

19) State that it is the intent of the Legislature that every newborn and infant who does not pass his or her preliminary hearing screening test receive a follow-up hearing screening no later than three months of age and encourages CDE to work toward this goal.

EXISTING LAW :

1) Establishes the Newborn and Infant Hearing Screening, Tracking, and Intervention Act which requires every general acute care hospital with licensed perinatal services to offer every newborn a hearing screening test for the identification of hearing loss, as specified, and provide written information on the availability of community resources and services for children with hearing loss to the parents of those who are diagnosed with a hearing loss.

2) Establishes the California Early Start Intervention Services Act, commonly known as the Early Start program, provides various early intervention services for infants and toddlers who have disabilities to enhance their development and to minimize the potential for developmental delays.

AS PASSED BY THE ASSEMBLY , this bill required parents of all newborns and infants diagnosed with a hearing loss to be provided specified information on communication options for children with hearing loss.

FISCAL EFFECT : According to the Senate Appropriations Committee, costs in the amount of \$126,000 in fiscal year (FY) 2011-1012 and \$252,000 in FY 2012-2013 from private funding sources.

COMMENTS : According to the author, with new developments in cochlear implants, more profoundly deaf children are able to

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hear and speak and can be completely assimilated into society. The author maintains that the maximum time for oral language development is in the first five years of life. By the time children reach age five, the author argues, the ability to learn oral language decreases annually. The author asserts that oral language is one hearing option for the profoundly deaf and hard of hearing, but others include ASL, Cued Speech, and Total Communication. According to the author, a major concern in California is that many parents of infants who are diagnosed with hearing loss are not provided with information on all communication options and are most often unfamiliar with the resources and options that are available to them. The author maintains that this bill will help ensure that parents

understand the rights and resources that they have available for their children.

Analysis Prepared by : Tanya Robinson-Taylor / HEALTH / (916)
319-2097

FN: 0006682

Amend Section 1793.02 of the Civil Code to read:

1793.02. (a) All new and used assistive devices sold at retail in this state shall be accompanied by the retail seller's written warranty which shall contain the following language: "This assistive device is warranted to be specifically fit for the particular needs of you, the buyer. If the device is not specifically fit for your particular needs, it may be returned to the seller within 30 days of the date of actual receipt by you or completion of fitting by the seller, whichever occurs later. If you return the device, the seller will either adjust or replace the device or promptly refund the total amount paid. This warranty does not affect the protections and remedies you have under other laws." In lieu of the words "30 days" the retail seller may specify any longer period.

(b) The language prescribed in subdivision (a) shall appear on the first page of the warranty in at least 10-point bold type. The warranty shall be delivered to the buyer at the time of the sale of the device.

(c) If the buyer returns the device within the period specified in the written warranty, the seller shall, without charge and within a reasonable time, adjust the device or, if appropriate, replace it with a device that is specifically fit for the particular needs of the buyer. If the seller does not adjust or replace the device so that it is specifically fit for the particular needs of the buyer, the seller shall promptly refund to the buyer the total amount paid, the transaction shall be deemed rescinded, and the seller shall promptly return to the buyer all payments and any assistive device or other consideration exchanged as part of the transaction and shall promptly cancel or cause to be canceled all contracts, instruments, and security agreements executed by the buyer in connection with the sale. When a sale is rescinded under this section, no charge, penalty, or other fee may be imposed in connection with the purchase, fitting, financing, or return of the device.

(d) With respect to the retail sale of an assistive device to an individual, organization, or agency known by the seller to be purchasing for the ultimate user of the device, this section and subdivision (b) of Section 1792.2 shall be construed to require that the device be specifically fit for the particular needs of the ultimate user.

(e) This section and subdivision (b) of Section 1792.2 shall not apply to any of the following sales of assistive devices:

(1) A catalog or similar sale, as defined in subdivision (q) of Section 1791, except a sale of a hearing aid.

(2) A sale which involves a retail sale price of less than fifteen dollars (\$15).

(3) A surgical implant performed by a physician and surgeon, or a

restoration or dental prosthesis provided by a dentist.

(f) The rights and remedies of the buyer under this section and subdivision (b) of Section 1792.2 are not subject to waiver under Section 1792.3. The rights and remedies of the buyer under this section and subdivision (b) of Section 1792.2 are cumulative, and shall not be construed to affect the obligations of the retail seller or any other party or to supplant the rights or remedies of the buyer under any other section of this chapter or under any other law or instrument.

(g) Section 1795.5 shall not apply to a sale of used assistive devices, and for the purposes of the Song-Beverly Consumer Warranty Act the buyer of a used assistive device shall have the same rights and remedies as the buyer of a new assistive device.

(h) The language in subdivision (a) shall not constitute an express warranty for purposes of Sections **1793.2** and **1793.3**.

(i) The Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board created pursuant to Section 2531 of the Business and Professions Code may adopt regulations to carry out the purposes and objectives of Subdivisions (a), (b) and (c). Until the board adopts regulations under this subdivision, subdivisions (a), (b) and (c) shall remain in effect.

SPEECH-LANGUAGE PATHOLOGY AND AUDIOLOGY AND HEARING AID DISPENSERS BOARD

FINDING OF EMERGENCY

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

SPECIFIC FACTS DEMONSTRATING THE NEED FOR IMMEDIATE ACTION

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

AUTHORITY AND REFERENCE CITATIONS

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

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

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

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

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

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

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

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

FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Cost/Savings in Federal Funding to the State:

This proposed regulation would clarify and make specific licensing requirements for Dispensing Audiologists, CPD requirements, and course approval for providers. The CPD requirements for licensees and course approval requirements for providers are not anticipated to have fiscal implications since it is assumed the providers will pay the SPLA/HAD Board the same fees previously paid to the former HAD Bureau. Since DA's would no longer be required to maintain a separate audiology license, the \$110 biennial fee paid to SPLA by licensees would no longer be collected. The SPLA Fund (0376) would experience an annual revenue loss of \$50,435 annually or \$100,870 biennially, as a result. (917 DA's @ \$110 biennially).

All Dispensing Audiology fees paid to the former HAD Bureau will now be collected by the Board but deposited into the HAD account (0208). It is anticipated that the Hearing Aid Dispensers Account (0208) would not experience an overall net change, as a result of this proposal.

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

Nondiscretionary Costs/Savings to Local Agencies: None

Local Mandate: None

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

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

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

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

- CE Provider assumptions:

- 50 CE providers in California
- 150-250 approved courses
- \$50 fee for each submitted course. Courses valid for 12 months.
- No application fee or renewal fee required.

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

AND

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

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

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

- Licensed audiologists who dispensed hearing aids under a separate hearing aid license prior to the enactment of the new statutes under Section 2539.1, were required to pay the biennial audiology license renewal fee of \$110 and a separate hearing aid dispensers license fee of \$280 annually. Under the new provisions, licensed audiologists who qualify as DA's must pay only one license renewal fee for the dispensing audiology license which has been established at \$280 annually. As such, the DA will save the \$110 biennially (\$55 annually) for the separate license fees previously paid for the audiology license.
- Existing regulations require licensed speech-language pathologists and audiologists to obtain twenty-four (24) hours of CPD course work from a Board-approved provider every two years, coinciding with the biennial license renewal cycles. Of the twenty-four (24) hours required, licensed speech-language pathologists and audiologists may obtain a maximum of four (4) hours in related or indirect client care courses and another six (6) hours in self-study. Licensed audiologists are also limited to a maximum of number of hours that may be obtained in courses where the content focuses on equipment, devices or other products of a particular manufacturer or company. The proposed amendments to Section 1399.160.3 would establish a distinct set of CPD requirements for audiologists authorized to dispense hearing aids and would require twelve (12) hours annually with fifty percent (50%) of

**SPEECH-LANGUAGE PATHOLOGY, AUDIOLOGY &
HEARING AID DISPENSERS BOARD
DEPARTMENT OF CONSUMER AFFAIRS**

INITIAL STATEMENT OF REASONS

Hearing Date: TBD

Subject Matter of Proposed Regulations: Dispensing Audiologist Renewal Fees/Continuing Professional Development

Sections Affected: Title 16, Division 13.4, Sections 1399.157; 1399.160.3; 1399.160.6

Introduction

On January 1, 2010, pursuant to AB 1535, (Jones, Chapter 309, Statutes of 2009) the Hearing Aid Dispensers Bureau, established in 1972, and the Speech-Language Pathology and Audiology Board, established in 1974, merged to form one regulatory body, the Speech-Language Pathology & Audiology & Hearing Aid Dispensers Board. Both the former entities set licensing standards and enforced the laws governing the practices of the specified professions, speech-language pathology and audiology, and hearing aid dispensers, respectively. The primary priority of both entities as well as the newly formed Speech-Language Pathology, Audiology & Hearing Aid Dispensers Board (Board) is the protection of the public.

Specific Purpose of Each Amendment:

1. Amend Section 1399.157

The proposed amendment establishes the annual renewal cycle and authorized renewal fee for dispensing audiologists in order to appropriately fund the regulation of licensed audiologists who sell hearing aids.

Factual Basis/Rationale

In order to implement the provisions of the merger legislation, AB 1535, the Board must amend its licensing provisions to reflect the newly established renewal requirements for licensed dispensing audiologists. Business and Professions Code Section 2534.2 established a license renewal fee for a dispensing audiologist to not exceed \$280. Currently, licensed hearing aid dispensers pay a license renewal fee of \$280. However, the new statutory

provisions regarding the dispensing audiology renewal fees do not specify the license renewal cycle as licensing renewal cycles are typically established by regulation. Existing California Code of Regulations Section 1399.157 provides for a biennial renewal cycle for licensed speech-language pathologists and audiologists. The proposed amendments would provide for an annual renewal cycle for dispensing audiologists in order to provide a sufficient revenue source from dispensing practitioners to be deposited into the Hearing Aid Dispensers Account. The provisions of AB 1535 (Section 55) mandates that the Board establish fees for dispensing audiologists that are sufficient to support the Board in its regulation of licensed audiologists who sell hearing aids and hearing aid dispensers and that such fees are fairly appropriated.

2. Amend Section 1399.160.3

The proposed amendments mandate a specified number of continuing professional development hours in hearing aid related coursework that must be obtained by a dispensing audiologist as a condition of license renewal.

Factual Basis/Rationale

Business and Professions Code Section 2539.1, effective January 1, 2010, provides an avenue for a licensed audiologist, whose audiology and hearing aid dispensers' licenses were in good standing as of January 1, 2010, and who had taken and passed the requisite hearing aid dispensers examinations, to be eligible to dispense hearing aids under the audiology license. The provisions of Section 2539.1 specify that licensed audiologists, who are eligible to continue selling hearing aids under the audiology license, shall be subject to the provisions of the Speech-Language Pathology and Audiology Licensure Act (hereinafter "Act"). The Act requires licensed audiologists to complete a specified number of hours in continuing professional development as relevant to the scope of practice of audiology, which includes the fitting of hearing aids. Pursuant to the changes enacted under Assembly Bill 1535, the fitting and selling of hearing aids is now within the scope of practice of a dispensing audiologist and, as such, must be appropriately reflected in the continuing professional development requirements.

The proposed amendments would establish continuing professional development requirements specifically for dispensing audiologists. Business and Professions Code Section 2532.6 established continuing professional development requirements for licensed speech-language pathologists and audiologists and included the authority for the Board to approve continuing professional development providers and courses, as necessary. The implementing continuing professional development regulations were adopted in 1999, and since then, licensed speech-language pathologists and audiologists have been required to complete twenty-four (24) hours of continuing professional development course work from a Board-approved provider every two-years, coinciding with the

biennial license renewal cycles. Licensed speech-language pathologists and audiologists may obtain a maximum of four (4) hours in related or indirect client care courses and another six (6) hours in self-study. Licensed audiologists are also limited to a maximum number of hours that may be obtained in courses where the content focuses on equipment, devices or other products of a particular manufacturer or company. The proposed amendments to Section 1399.160.3 would establish a distinct set of continuing professional development requirements for audiologists authorized to dispense hearing aids and would require twelve (12) hours annually with fifty percent (50%) of the requisite continuing professional development hours to be obtained through hearing aid related courses where the content does not focus on equipment, devices or other products of a particular manufacturer or company. In addition, the dispensing audiologist may accumulate one-half (1.5) hours in indirect or related client care courses and another one-half (1.5) hours in self-study courses. The proposed language reflects the intended benefit of mandatory continued professional growth in that the dispensing audiologists would be required to stay current and abreast of new information and practice trends in the respective fields of audiology and hearing aid dispensing, which do have significant overlap, and are also distinct in their professional scope and patient responsibility.

Since mandatory continuing professional development exists as an additional layer of public protection as it ensures licensees are exposed to current and relevant practice information in order to provide quality patient/client care, the proposed language clearly qualifies the requisite fifty percent (50%) of the continuing professional development hours required of dispensing audiologists in hearing aid related coursework and restricts courses of a particular manufacturer/provider where the content of the course focuses on the marketing of a particular device or equipment. Courses aimed at marketing products do not reflect the spirit of continuing professional development for licensees as such courses are not independent of commercial influence and the focus of such courses serve as a financial benefit to the course provider as opposed to an educational learning experience about relevant practice information. The proposed amendments also stipulate that the remaining fifty percent (50%) of the requisite continuing professional development hours be obtained from audiology coursework specifically where the content does not solely focus on aspects of hearing aid dispensing.

3. Amend Section 1399.160.6

The proposal establishes procedures for the Board to review and approve courses related to the dispensing of hearing aids as offered by Board-approved providers in order to confirm that such courses meet the established requirements as appropriate continuing professional development for dispensing audiologists' license renewal. The proposed amendments set forth the information and documentation that must be submitted to the Board for each course offered.

As stated earlier, the scope of practice of audiology and hearing aid dispensing are interdependent in several ways, and as such, many courses offering practice-relevant information may overlap both professions. For this reason, the Board determined that independent course review of all hearing aid related coursework is necessary in order to ensure that the courses offered by Board-approved providers meet the intent of the proposed continuing professional development requirements. The proposed amendments to Section 1399.160.6 establishes the course review procedures.

4. Sections 1399.160.4, 1399.160.5, 1399.160.7 are not being modified, however, the sections are provided below to assist one in understanding the proposed changes in context.

Factual Basis/Rationale

For ease in following the changes made in the sections above (1 and 2), the sections in this section have been provided to assist one in understanding the proposed changes in context.

Underlying Data:

- November 4, 2009 Audiology Practice Committee Meeting Minutes
- March 24-25, 2010 Speech-Language Pathology & Audiology & Hearing Aid Dispensers Board Meeting and Audiology Practice Committee Meeting Minutes
- May 26-27, 2010 Speech-Language Pathology & Audiology & Hearing Aid Dispensers Board Meeting and Audiology Practice Committee Meeting Minutes

Business Impact:

The Board has made an initial determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. This initial determination is based on the following facts or evidence/documents/testimony:

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

providers of the requisite continuing professional development courses for dispensing audiologists.

There are approximately fifty (50) approved hearing aid dispenser continuing education providers approved by the Board and approximately two-hundred (150-200) approved courses

- CE Provider assumptions:
 - 50 CE providers in California
 - 150-250 approved courses
 - \$50 fee for each submitted course. Courses valid for 12 months.
 - No application fee or renewal fee required.

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

Specific Technologies or Equipment:

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

Consideration of Alternatives:

No reasonable alternative which was considered or that has otherwise been identified and brought to the attention of the board would be either more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed regulation. Another alternative would be to not pursue the regulatory changes, however, not pursuing these changes would jeopardize the necessary funding source to the Board's funds and would uphold continuing professional development requirements for licensed audiologists authorized to dispense hearing aids that do not reflect the scope of professional growth that these licensees should be mandated to complete in order to provide competent services to hearing impaired consumers.

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

Effect on Housing Costs: None

ORDER OF ADOPTION

SPEECH-LANGUAGE PATHOLOGY AND AUDIOLOGY AND HEARING AID DISPENSERS BOARD

Title 16, Division 13.4, California Code of Regulations Speech-Language Pathology and Audiology Regulations

Article 8. Miscellaneous

(1) Amend section 1399.157 of Division 13.4 of Title 16 of the California Code of Regulations to read as follows:

1399.157. Fees.

- (a) The application fee shall be \$60.00.
- (b) The biennial renewal fee for licensed speech-language pathologists and audiologists which expire prior to January 31, 2002 shall be \$75.00. Effective January 1, 2002, the biennial renewal fee for licensed speech-language pathologists or audiologists shall be \$110.00.
- (c) The annual renewal fee for a licensed audiologist authorized to dispense hearing aids shall be \$280.
- ~~(d)~~ (d) The fee for registration of an aide shall be \$10.00
- ~~(e)~~ (e) The application and the biennial renewal fee for a continuing professional development provider is a \$200 non-refundable fee.
- ~~(f)~~ (f) The fee for issuance of a license status and history certification letter shall be \$10.00.

NOTE: Authority cited: Sections 2531.95 and 2532.6(a), Business and Professions Code.
Reference: Sections 163.5, 2532.6(f), and 2534.2, Business and Professions Code.

Article 11. Continuing Professional Development

(2) Amend section 1399.160.3 of Division 13.4 of Title 16 of the California Code of Regulations to read as follows:

1399.160.3. Continuing Professional Development Requirements.

- (a) A licensee, whose license expires in the year 2001, shall accrue at least twelve (12) hours of continuing professional development courses as defined in Section 1399.160.4. A licensee may accrue no more than four (4) hours of continuing professional development courses through self-study courses during this renewal period.
- (b) A licensee who holds both a speech-language pathology license and an audiology license that expire in the year 2001, shall accrue at least eight (8) hours of continuing professional development courses as defined in Section 1399.160.4. for each license. A licensee may accrue no more than two (2) hours of continuing professional development courses through self-study courses for each license.
- (c) A licensee shall accrue at least twenty-four (24) hours during a single renewal period of continuing professional development courses as defined in Section 1399.160.4. A

licensee may accrue no more than eight (8) hours of continuing professional development courses through the following activities during a single renewal period:

(1) No more than six (6) hours of self-study activities,

(2) No more than four (4) hours from courses related to the discipline of speech-language pathology or audiology, as defined in Section 1399.160.4(c)(4) or in indirect client care courses as defined in Section 1399.160.4(c)(3).

(3) Not more than 50% of the continuing professional development hours required of a licensed audiologist, shall be obtained from courses where the content focuses on equipment, devices, or other products of a particular publisher, company or corporation.

(d) A licensee who holds both a speech-language pathology license and an audiology license, shall accrue at least sixteen (16) hours of continuing professional development courses as defined in Section 1399.160.4 for each license. A licensee may accrue no more than five (5) hours of continuing professional development through the following activities for each license:

(1) No more than two and one-half (2.5) hours of self-study activities,

(2) No more than two and one-half (2.5) hours from courses related to the discipline of speech-language pathology or audiology, as defined in Section 1399.160.4(c)(4) or in indirect client care courses as defined in Section 1399.160.4(c)(3).

(e) A licensed audiologist authorized to dispense hearing aids as provided by Section 2539.1 of the code shall accrue at least twelve (12) hours of continuing professional development as defined in Section 1399.160.4 annually. A licensed audiologist authorized to dispense hearing aids may accrue no more than (3) hours of continuing professional development courses through the following activities during a single renewal period:

(1) No more than one and a half (1.5) hours of self-study activities,

(2) No more than one and a half (1.5) hours from courses related to the discipline of audiology, as defined in Section 1399.160.4(c)(4) or in indirect client care courses as defined in Section 1399.160.4(c)(3).

(3) Exactly 50% of the continuing professional development hours required of a licensed audiologist authorized to dispense hearing aids, shall be obtained from courses related to hearing aid dispensing but shall not be obtained from courses where the content focuses on the equipment, devices, or other products of a particular manufacturer or company. The remaining 50% of the continuing professional development hours required of a dispensing audiologist shall be relevant to the practice of audiology as defined in Section 2530.2 (k) and shall not be obtained from hearing aid dispensing courses as provided for in this section.

~~(e)~~ (f) If a licensee teaches a course offered by a provider registered with the board or an entity listed in Section 2532.6 of the Code, the licensee may claim credit for the same course only once, receiving the same amount of hours of continuing professional development credit as a licensee who attended the course.

~~(f)~~ (g) A licensee may not claim credit for the same course more than once for hours of continuing professional development.

~~(g)~~ (h) A licensee who takes a course as a condition of probation resulting from disciplinary action by the board may not apply the course as credit towards the continuing professional development.

NOTE: Authority cited: Sections 2531.95 and 2532.6(a), Business and Professions Code. Reference: Section 2532.6(b), (c), and (e), and 2539.1(a)-(b) Business and Professions Code.

(3) Section 1399.160.4 is not being modified, however, the section is provided below to assist one in understanding the proposed changes in context.

1399.160.4.Continuing Professional Development Course Content.

(a) A licensed speech-language pathologists shall determine that the content and learning outcomes of a course are relevant to the practice of speech-language pathology as defined in Section 2530.2(d).

(b) A licensed audiologist shall determine that the content and learning outcomes of a course are relevant to the practice of audiology as defined in Section 2530.2(k).

(c) The content of a course shall pertain to direct, related, or indirect patient/client care.

(1) Examples of direct patient/client care courses for the practice of speech-language pathology include: fluency disorders, voice disorders, motor disorders of speech, dysphagia, speech science, oral and written language disorders, aphasia and neurogenic disorders of language and cognition, augmentative and alternative communication, phonological/articulatory disorders language science, and patient/client counseling to facilitate recovery from, or adjustment to, a communication disorder.

(2) Examples of direct patient/client care courses for the practice of audiology include auditory and vestibular assessment, auditory habilitation/rehabilitation, hearing assistive technology, industrial audiology/hearing conservation and hearing science.

(3) Indirect patient/client care courses cover pragmatic aspects of speech-language pathology or audiology practice (e.g., legal or ethical issues, consultation, record-keeping, office management, managed care issues, research obligations, technological applications related to assessment/diagnosis or intervention).

(4) Courses that are related to the discipline of speech-language pathology or audiology may cover general medical or educational offerings including, but not limited to, social interaction, cultural and linguistic diversity as it applies to service delivery for diverse populations, professional service delivery models, interdisciplinary case management issues, or medical pathologies related to neurological disorders that also result in communication difficulties.

(d) A provider shall ensure that a course has specific objectives that are measurable.

(e) Upon completion of a course, a licensee shall evaluate the course through some type of evaluation mechanism.

(f) Courses considered outside the scope of continuing professional development include, but are not limited to, those in the following areas:

(1) money management, the licensee's personal finances or personal business matters;

(2) general physical fitness or the licensee's personal health;

(3) presentations by political or public figures or other persons that do not deal primarily with the practice of either speech-language pathology or audiology;

(4) tort liability;

(5) courses that address increased office production or computerization, financial planning, employee benefits, marketing or motivational topics to increase productivity or profitability; and

(6) courses in which the primary beneficiary is the licensee, not the consumer.

NOTE: Authority cited: Sections 2531.95 and 2532.6(a), Business and Professions Code.
Reference: Section 2532.6(b), (c), and (e), Business and Professions Code.

(4) Section 1399.160.5 is not being modified, however, the section is provided below to assist one in understanding the proposed changes in context.

1399.160.5.Hours of Continuing Professional Development.

(a) One hour of instruction is equal to one hour of continuing professional development credit.

(b) One academic quarter unit is equal to ten (10) hours of continuing professional

development credit.

(c) One academic semester unit is equal to fifteen (15) hours of continuing professional development credit.

(d) One academic trimester unit is equal to thirteen (13) hours of continuing professional development credit.

NOTE: Authority cited: Sections 2531.95 and 2532.6(a), Business and Professions Code. Reference: Section 2532.6(b), and (c), Business and Professions Code.

(5) Amend section 1399.160.6 of Division 13.4 of Title 16 of the California Code of Regulations to read as follows:

1399.160.6. Continuing Professional Development Course Approval.

(a) A licensee shall only be credited with continuing professional development hours if he or she takes a course from a board-approved provider with a valid, current approval as a provider or from an entity listed in Section 2532.6 (e)(1) of the Code.

(b) Courses related to the dispensing of hearing aids as offered by hearing aid manufacturers or companies shall be reviewed by the Board prior to the offering of the course. The continuing professional development provider must submit such request for course approval to the Board according to the timeline in Section 1399.151.1 (e). Such request shall include:

(1) The name of the sponsoring institution, the Board issued professional development provider number (with the exception of those entities listed in Section 2532.6(e)(1)), the address, telephone number and contact person.

(2) Course title, date(s), location(s), and number of continuing professional development hours offered.

(3) Type and method of educational instruction and learner outcomes to be met.

(4) A course outline, course description, and instructor information and qualifications.

(5) If available, advertisements intended to be used by the provider to advertise the relevant course.

~~(b)~~(c) A licensee or a continuing professional development provider may voluntarily petition Board consideration of any courses offered by an approved provider or an entity listed in Section 2532.6 (e)(1) of the Code. The licensee or continuing professional development provider must submit such request for course approval to the Board according to the timeline in Section 1399.151.1 (e). Such request shall include:

(1) The name of the sponsoring institution, the Board issued professional development provider number (with the exception of those entities listed in Section 2532.6(e)(1)), the address, telephone number and contact person.

(2) Course title, date(s), location(s), and number of continuing professional development hours offered.

(3) Type and method of educational instruction and learner outcomes to be met.

(4) A course outline, course description, and instructor information and qualifications.

(5) If available, advertisements intended to be used by the provider to advertise the relevant course.

NOTE: Authority cited: Sections 2531.95 and 2532.6(a), Business and Professions Code. Reference: Section 2532.6(b), (e)(1) and (e) (2), Business and Professions Code.

(6) Section 1399.160.7 is not being modified, however, the section is provided below to assist one in understanding the proposed changes in context.

1399.160.7. Board-Approved Providers.

(a) A continuing professional development provider shall meet the board's course content and instructor qualifications criteria, as provided under this article, to qualify to become a board-approved provider.

(b) An applicant for continuing professional development provider shall submit a completed Continuing Professional Development Provider Application (form no. 77A-50, new 1/99), hereby incorporated by reference, remit the appropriate fees, submit a complete operational plan, and obtain a continuing professional provider number from the board to become a board-approved provider.

(c) A provider approval issued under this section shall expire twenty-four months after the approval issue date. To renew an unexpired provider approval, the provider shall, on or before the expiration date of the approval, pay the biennial renewal fee set forth in Section 1399.157 of these regulations.

(d) A provider approval that is not renewed by the expiration date may not be renewed, restored, reinstated, or reissued thereafter, but the provider may apply for a new approval.

(e) Board-approved provider status is not transferable.

NOTE: Authority cited: Sections 2531.95 and 2532.6(a), Business and Professions Code.
Reference: Section 2532.6(e)(1) and (e)(2), Business and Professions Code.

Dated: August 23, 2010

Annemarie Del Mugnaio
Executive Officer
Speech-Language Pathology & Audiology &
Hearing Aid Dispensers Board

**DEPARTMENT OF CONSUMER AFFAIRS
SPEECH-LANGUAGE PATHOLOGY & AUDIOLOGY
& HEARING AID DISPENSERS BOARD**

TITLE 16 CALIFORNIA CODE OF REGULATIONS

DIVISION 13.3

**ARTICLE 2
APPLICATIONS**

§ 1399.110. Applications.

In addition to any other requirements for licensure, whenever it appears that an applicant for a license may be unable to practice hearing aid dispensing safely because the applicant's ability to practice may be impaired due to mental or physical illness affecting competency, the board may require the applicant to be examined by one or more physicians and surgeons or psychologists designated by the board. The board shall pay the full cost of such examination. An applicant's failure to comply with the requirement shall render his or her application incomplete. The report of the evaluation shall be made available to the applicant. If after receiving the evaluation report the board determines that the applicant is unable to safely practice, the board may deny the application.

Authority cited: Sections 3328, Business and Professions Code. Reference: Sections 3352 and 3357, Business and Professions Code.

History

1. Renumbering and amendment of Section 1399.110 to Section 1399.115 filed 5-6-83; effective thirtieth day thereafter (Register 83, No. 19)

**ARTICLE 6
ENFORCEMENT**

§ 1399.130. Violations

Notwithstanding the causes for action listed under 3401 of the Code, the Board may deny, issue subject to terms and conditions, suspend, or revoke a license, or impose conditions of probation upon a licensee, for any of the following causes:

(a) Commission of an act of sexual abuse or misconduct.

(b) Including or permitting to be included any of the following provisions in an agreement to settle a civil dispute arising from the licensee's practice, whether the agreement is made before or after the filing of an action:

(1) A provision that prohibits another party to the dispute from contacting, cooperating, or filing a complaint with the board.

(2) A provision that requires another party to the dispute to attempt to withdraw a complaint the party has filed with the board.

(c) Failure to provide to the board, as directed, lawfully requested copies of documents within 15 days of receipt of the request or within the time specified in the request, whichever is later, unless the licensee is unable to provide the documents within this time period for good cause, including but not limited to, physical inability to access the records in the time allowed due to illness or travel. This subsection shall not apply to a licensee who does not have access to, and control over, medical records.

(d) Failure to cooperate and participate in any board investigation pending against the licensee. This subsection shall not be construed to deprive a licensee of any privilege guaranteed by the Fifth Amendment to the Constitution of the United States, or any other constitutional or statutory privileges. This subsection shall not be construed to require a licensee to cooperate with a request that would require the licensee to waive any constitutional or statutory privilege or to comply with a request for information or other matters within an unreasonable period of time in light of the time constraints of the licensee's practice. Any exercise by a licensee of any constitutional or statutory privilege shall not be used against the licensee in a regulatory or disciplinary proceeding against the licensee.

(e) Failure to report to the board within 30 days any of the following:

(1) The bringing of an indictment or information charging a felony against the licensee.

(2) The arrest of the licensee.

(3) The conviction of the licensee, including any verdict of guilty, or pleas of guilty or no contest, of any felony or misdemeanor.

(4) Any disciplinary action taken by another licensing entity or authority of this state or of another state or an agency of the federal government or the United States military.

(f) Failure or refusal to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to the board.

Authority cited: Section 726 and 3328, Business and Professions Code.
Reference: Section 3401, Business and Professions Code.

§ 1399.130.1. Required Actions Against Registered Sex Offenders

(a) Except as otherwise provided, if an individual is required to register as a sex offender pursuant to Section 290 of the Penal Code, or the equivalent in another state or territory, or military or federal law, the board shall:

(1) Deny an application by the individual for licensure, in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(2) Promptly revoke the license of the individual, in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of

Division 3 of Title 2 of the Government Code, and shall not stay the revocation nor place the license on probation.

(3) Deny any petition to reinstate or reissue the individual's license.

(b) This section shall not apply to any of the following:

(1) An individual who has been relieved under Section 290.5 of the Penal Code of his or her duty to register as a sex offender, or whose duty to register has otherwise been formally terminated under California law or the law of the jurisdiction that required registration; provided, however, that nothing in this paragraph shall prohibit the board from exercising its discretion to deny or discipline a licensee under any other provision of state law.

(2) An individual who is required to register as a sex offender pursuant to Section 290 of the Penal Code solely because of a misdemeanor conviction under Section 314 of the Penal Code; provided, however, that nothing in this paragraph shall prohibit the board from exercising its discretion to deny a license or discipline a licensee under any other provision of state law based upon the licensee's conviction under section 314 of the Penal Code.

(3) Any administrative proceeding that is fully adjudicated prior to the effective date of this regulation. A petition for reinstatement of a revoked or surrendered license shall be considered a new proceeding for purposes of this paragraph, and the prohibition in subsection (a) against reinstating a license shall govern.

Authority cited: Section 3328, Business and Professions Code. Reference: Section 3401, Business and Professions Code.

1399.131. Disciplinary Guidelines.

In reaching a decision on a disciplinary action under the Administrative Procedure Act (Government Code Section 11400 et seq.), the ~~director~~ board shall consider the disciplinary guidelines entitled "Disciplinary Guidelines and Model Disciplinary Orders" Sixth Edition, June 1997 which are hereby incorporated by reference. Deviation from these guidelines and orders, including the standard terms of probation, is appropriate where the ~~director~~ board in ~~his or her~~ its sole discretion determines that the facts of the particular case warrant such a deviation -- for example: the presence of mitigating factors; the age of the case; evidentiary problems.

Notwithstanding the disciplinary guidelines, any proposed decision issued in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code that contains any finding of fact that the licensee engaged in any act of sexual contact, as defined in subdivision (c) of Section 729 of the Code, with a patient, or any finding that the licensee has committed a sex offense or been convicted of a sex offense as defined in Section 44010 of the Education Code, shall contain an order revoking the license. The proposed decision shall not contain any order staying the revocation of the license.

Authority cited: Section 3328, Business and Professions Code; Sections 11400.20 and 11425.50(e), Government Code. Reference: Sections 3400, 3401, 3402 and 3403, Business and Professions Code; Sections 11400.20 and 11425.50(e), Government Code.

History

1. New section filed 6-17-98; operative 7-17-98 (Register 98, No. 25). For prior history, see Register 83, No. 19.
2. Change without regulatory effect amending section filed 6-11-2001 pursuant to section 100, title 1, California Code of Regulations (Register 2001, No. 24).

DIVISION 13.4

ARTICLE 1 GENERAL PROVISIONS

§ 1399.150.3. Delegation of Functions.

(a) Except for those powers reserved exclusively to the "agency itself" under the Administrative Procedure Act (Section 11500 et seq. of the Government Code), the board delegates and confers upon the executive officer of the board, ~~or in his or her absence, the executive director of the Medical Board,~~ all functions necessary to the dispatch of the board in connection with investigative and administrative proceedings under the jurisdiction of the board including, but not limited to, the ability to accept default decisions and the authority to approve settlement agreements for the revocation, surrender or interim suspension of a license.

(b) ~~The executive officer is further authorized, subject to the approval of the board,~~ to investigate and evaluate each applicant for licensure under the Act; and to issue a license in conformance with the provisions of the Act and this chapter.

Authority cited: Sections 2018, 2531.4, 2531.5 and 2531.25, Business and Professions Code. Reference: Sections 2531.4 and 2533, Business and Professions Code.

History

1. Change without regulatory effect renumbering former section 1399.153 to section 1399.150.3 filed 12-6-99 pursuant to section 100, title 1, California Code of Regulations (Register 99, No. 50).

ARTICLE 2 APPLICATION

§ 1399.151. Applications for License.

(a) An application for a license as a speech-language pathologist or audiologist shall be filed with the board at its principal office.

(b) Every application shall be typed or written in ink, signed under the penalty of perjury and accompanied by the appropriate application fee and by such evidence, statements, or documents as therein required.

(c) The applicant shall be notified, in writing, of the results of the evaluation of the application for license if the application is rejected.

(d) An applicant shall be deemed to have abandoned his or her licensure application if the requirements for licensure are not completed within two years from the date on which application was filed unless the applicant has requested extension by the board. An application submitted subsequent to an abandoned application shall be treated as a new application.

(e) In addition to any other requirements for licensure, whenever it appears that an applicant for a license may be unable to practice speech-language pathology or audiology safely because the applicant's ability to practice may be impaired due to mental or physical illness affecting competency, the board may require the applicant to be examined by one or more physicians and surgeons or psychologists designated by the board. The board shall pay the full cost of such examination. An applicant's failure to comply with the requirement shall render his or her application incomplete. The report of the evaluation shall be made available to the applicant.

Authority cited: Section 2531.95, Business and Professions Code.
Reference: Sections 2531.4 and 2532.1, Business and Professions Code.

History

1. Renumbering of former section 1399.151 to section 1399.152, and renumbering of former section 1399.150(b) to section 1399.151 filed 8-9-83; effective thirtieth day thereafter (Register 83, No. 33)

2. Change without regulatory effect amending section filed 11-1-91 pursuant to section 100, title 1, California Code of Regulations (Register 92, No. 8).

3. Change without regulatory effect amending section filed 4-27-98 pursuant to section 100, title 1, California Code of Regulations (Register 98, No. 18).

4. Change without regulatory effect renumbering former section 1399.151 to section 1399.150.1 and renumbering former section 1399.154 to section 1399.151 filed 12-6-99 pursuant to section 100, title 1, California Code of Regulations (Register 99, No. 50).

ARTICLE 6 DISCIPLINARY GUIDELINES

1399.155 Disciplinary Guidelines.

In reaching a decision on a disciplinary action under the Administrative Procedure Act (Section 11400 et seq. of the Government Code) the board shall consider the disciplinary guidelines entitled “Disciplinary Guidelines July 16, 2004” that are hereby incorporated by reference. Deviation from these guidelines and orders, including the standard terms of probation is appropriate where the board, in its sole discretion, determines that the facts of the particular case warrant such a deviation—for example: the presence of mitigating factors; the age of the case and evidentiary problems.

Notwithstanding the disciplinary guidelines, any proposed decision issued in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code that contains any finding of fact that the licensee engaged in any act of sexual contact, as defined in subdivision (c) of Section 729 of the Code, with a patient, or any finding that the licensee has committed a sex offense or been convicted of a sex offense as defined in Section 44010 of the Education Code, shall contain an order revoking the license. The proposed decision shall not contain any order staying the revocation of the license.

Authority cited: Sections 2531.95, Business and Professions Code; and Section 11400.20, Government Code. Reference: Sections 729, 2533 and 2533.1, Business and Professions Code; and Sections 11400.20, and 11425.50(e), and 11500, Government Code; and Section 44010, Education Code.

History

1. Amendment filed 8-19-76; effective thirtieth day thereafter (Register 76, No. 34).
2. Repealer of former section 1399.155, and renumbering and amendment of former section 1399.156 to section 1399.155 filed 8-9-83; effective thirtieth day thereafter (Register 83, No. 33).
3. Renumbering of section 1399.155 to section 1399.154(d) filed 11-23-83; effective thirtieth day thereafter (Register 83, No. 48).
4. New section filed 1-9-84; effective thirtieth day thereafter (Register 84, No. 2).
5. Change without regulatory effect amending subsections (a), (a)(1), (a)(2) and (a)(3) filed 11-1-91 pursuant to section 100, title 1, California Code of Regulations (Register 92, No. 8).

6. Change without regulatory effect amending subsections (a)(1)-(3), (b)(1)-(3) and (c)(1)-(3) filed 4-27-98 pursuant to section 100, title 1, California Code of Regulations (Register 98, No. 18).
7. New subsections (d)-(d)(2) and amendment of Note filed 4-7-99 as an emergency; operative 4-7-99 (Register 99, No. 7). A Certificate of Compliance must be transmitted to OAL by 8-5-99 or emergency language will be repealed by operation of law on the following day.
8. Certificate of Compliance as to 4-7-99 order transmitted to OAL 8-4-99 and filed 9-2-99 (Register 99, No. 36).
9. Change without regulatory effect renumbering former section 1399.155 to section 1399.151.1 and renumbering former section 1399.178 to section 1399.155 filed 12-6-99 pursuant to section 100, title 1, California Code of Regulations (Register 99, No. 50).
10. Amendment of section and Note filed 4-21-2005; operative 5-21-2005 (Register 2005, No. 16).

ARTICLE 7 DENIAL, SUSPENSION AND REVOCATION OF LICENSURE

§ 1399.156. Unprofessional Conduct.

Unprofessional conduct as set forth in Section 2533 of the code includes, but is not limited to the following:

- (a) Violating or conspiring to violate or aiding or abetting any person to violate the provisions of the Act or these regulations.
- (b) Committing any corrupt act, or any abusive act against a patient, which is substantially related to the qualifications, functions or duties of a speech-language pathologist or audiologist.
- (c) Incompetence or negligence in the practice of speech-language pathology or audiology which has endangered or is likely to endanger the health, welfare, or safety of the public.
- (d) Commission of an act of sexual abuse or misconduct.
- (e) Including or permitting to be included any of the following provisions in an agreement to settle a civil dispute arising from the licensee's practice, whether the agreement is made before or after the filing of an action:
 - (1) A provision that prohibits another party to the dispute from contacting, cooperating, or filing a complaint with the board.
 - (2) A provision that requires another party to the dispute to attempt to withdraw a complaint the party has filed with the board.
- (f) Failure to provide to the board, as directed, lawfully requested copies of documents within 15 days of receipt of the request or within the time specified in the request, whichever is later, unless the licensee is unable to provide the

documents within this time period for good cause, including but not limited to, physical inability to access the records in the time allowed due to illness or travel. This subsection shall not apply to a licensee who does not have access to, and control over, medical records.

(g) Failure to cooperate and participate in any board investigation pending against the licensee. This subsection shall not be construed to deprive a licensee of any privilege guaranteed by the Fifth Amendment to the Constitution of the United States, or any other constitutional or statutory privileges. This subsection shall not be construed to require a licensee to cooperate with a request that would require the licensee to waive any constitutional or statutory privilege or to comply with a request for information or other matters within an unreasonable period of time in light of the time constraints of the licensee's practice. Any exercise by a licensee of any constitutional or statutory privilege shall not be used against the licensee in a regulatory or disciplinary proceeding against the licensee.

(h) Failure to report to the board within 30 days any of the following:

(1) The bringing of an indictment or information charging a felony against the licensee.

(2) The arrest of the licensee.

(3) The conviction of the licensee, including any verdict of guilty, or pleas of guilty or no contest, of any felony or misdemeanor.

(4) Any disciplinary action taken by another licensing entity or authority of this state or of another state or an agency of the federal government or the United States military.

(i) Failure or refusal to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to the board.

Authority cited: Section 726 and 2531.95, Business and Professions Code. Reference: Section 2533, Business and Professions Code.

History

1. Renumbering and amendment of former section 1399.156 to section 139.15, and renumbering and amendment of former section 1399.157(a) to section 1399.156 filed 8-9-83; effective thirtieth day thereafter (Register 83, No. 33).

2. Change without regulatory effect amending section filed 11-1-91 pursuant to section 100, title 1, California Code of Regulations (Register 92, No. 8).

3. Change without regulatory effect amending first and last paragraphs filed 4-27-98 pursuant to section 100, title 1, California Code of Regulations (Register 98, No. 18).

4. Change without regulatory effect renumbering former section 1399.156 to section 1399.152 and renumbering former section 1399.180 to section 1399.156 filed 12-6-99 pursuant to section 100, title 1, California Code of Regulations (Register 99, No. 50).

§ 1399.156.5. Required Actions Against Registered Sex Offenders

(a) Except as otherwise provided, if an individual is required to register as a sex offender pursuant to Section 290 of the Penal Code, or the equivalent in another state or territory, or military or federal law, the board shall:

(1) Deny an application by the individual for licensure, in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(2) Promptly revoke the license of the individual, in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and shall not stay the revocation nor place the license on probation.

(3) Deny any petition to reinstate or reissue the individual's license.

(b) This section shall not apply to any of the following:

(1) An individual who has been relieved under Section 290.5 of the Penal Code of his or her duty to register as a sex offender, or whose duty to register has otherwise been formally terminated under California law or the law of the jurisdiction that required registration.

(2) An individual who is required to register as a sex offender pursuant to Section 290 of the Penal Code solely because of a misdemeanor conviction under Section 314 of the Penal Code; provided, however, that nothing in this paragraph shall prohibit the board from exercising its discretion to discipline a licensee under any other provision of state law based upon the licensee's conviction under section 314 of the Penal Code.

(3) Any administrative proceeding that is fully adjudicated prior to the effective date of this regulation. A petition for reinstatement of a revoked or surrendered license shall be considered a new proceeding for purposes of this paragraph, and the prohibition in subsection (a) against reinstating a license shall govern.

Authority cited: Section 2531.95, Business and Professions Code.
Reference: Section 2533, Business and Professions Code; Section 11500, Government Code; and Section 290, Penal Code.