

DEPARTMENT OF REGULATORY AGENCIES

Audiology and Hearing Aid Provider Licensure

3 CCR 711-1

AUDIOLOGY AND HEARING AID PROVIDER RULES

AUTHORITY

Basis

These rules are promulgated and adopted by the Director of Registrations pursuant to ~~§~~ Sections 12-5.5-106(5) and ~~§~~ 12-5.5-206(4), C. R. S.

Purpose

These rules are adopted to implement the Director's authority to license persons as audiologists or hearing aid providers and to set forth the requirements for being so licensed.

Rule 1 - ~~Minimum Practice Standards for the Sale of Hearing Aids~~Customer Records

The purpose of this rule is to ~~list some of the commonly accepted professional standards in the practice of audiology and as a hearing aid provider as required by § 12-5.5-105(1)(b)(IX) and § 12-5.5-205(1)(b)(X), C.R.S. Commonly accepted professional standards include, but are not limited to the following:~~identify the requirements for maintaining customer records by individuals licensed pursuant to Part I and Part II of the Audiologists and Hearing Aid Providers Act, 12-5.5-101, et.seq. pursuant to Sections 12-5.5-106(5) and 12-5.5-206(4) (b), C.R.S.

- A. ~~A hearing aid shall not be sold unless, within 6 months of the sale, an examination of the client/purchaser is conducted using pure tone air conduction, bone conduction, speech audiometry, and other tests utilizing appropriate established procedures and instrumentation in the fitting of hearing aids, except in cases of selling replacement hearing aids within one year after the date of the original purchase. Such tests shall be performed by a registered audiologist or registered hearing aid provider. An audiologist trainee or associate and a hearing aid provider trainee or associate may perform the examination when there is appropriate supervision. The licensed Audiologist or Hearing Aid Provider (Licensee) licensee shall maintain all customer records for at least seven years. These records shall identify customer's name, the goods and services provided to each customer (excluding minor accessories and batteries), and the date and price of each transaction.~~
- B. ~~The fitter of a hearing aid shall at a minimum attempt to:~~
- ~~1. Perform air conduction tests for hearing thresholds at frequencies of 250 Hz, 500 Hz, 1000 Hz, 2000 Hz, 4000 Hz, 6000 Hz, and 8000 Hz with masking where necessary;~~
 - ~~2. Perform bone conduction tests for hearing thresholds at frequencies of 250 Hz, 500 Hz, 1000 Hz, 2000 Hz, and 4000 Hz with masking where necessary;~~
 - ~~3. Perform a speech reception or speech awareness threshold test;~~
 - ~~4. Perform a word discrimination/recognition test;~~
 - ~~5. Perform an otoscopic examination of the ear or ears; and~~
 - ~~6. Obtain a medical history.~~
- C. ~~Any child under the age of 18 must have a medical evaluation by a licensed physician in the state of Colorado, preferably a physician who specializes in diseases of the ear, before purchasing a hearing aid. Any child who is to be fitted with a hearing aid must be referred~~

~~to an audiologist for an evaluation and rehabilitation before a hearing aid is fitted, since hearing loss may cause problems in language development and educational and social growth of the child.~~

~~D. All test instruments shall be calibrated at least once a year, or more often if necessary, to meet current standards established by the American National Standards Institute. Calibration of all test instruments must be performed by a qualified individual. A signed certificate indicating the most recent date of calibration shall be maintained and available for inspection.~~

~~E. All customer records must be maintained by a registered audiologist or hearing aid provider. If a hearing aid business is not owned by a registered audiologist or hearing aid provider, then such records must be maintained by the supervising registered audiologist or hearing aid provider or the registered audiologist or hearing aid provider designated by the owner. Customer records are the property of the business but must remain under the control of a registered audiologist or hearing aid provider at all times.~~

~~F. Any extension of the 30-day refund period must be in writing and submitted to the client.~~

Rule 2 - Malpractice Insurance for Audiologists

The purpose of the following rule is to establish the amount of malpractice coverage that must be ~~maintained~~ obtained by an audiologist who provides services to patients as required by

~~—§Sections~~ 12-5.5-106(4), and ~~§~~ 12-5.5-102(3)(e), C.R.S.:

A. An audiologist shall maintain malpractice coverage of at least of \$1,000,000 per incident and \$3,000,000 aggregate per year.

Rule 3 - Hearing Aid Provider Trainees and Associates

The purpose of this rule is to ~~clarify the scope of practice of Hearing Aid Provider Trainees and Associates, to~~ establish the time period during which a trainee license and associate registration certificate shall be valid, and to specify the components of the training required to be completed by trainees and associates pursuant to ~~—§ Section~~ 12-5.5-202.5(4), C.R.S.

A. A “~~hearing aid provider~~ trainee license” ~~—~~ is defined as a license issued to a hearing aid provider trainee or a hearing aid provider associate.

B. A “hearing aid provider trainee” is defined as an individual in training to become a licensed Hearing Aid Provider who has not completed 300 documented hours of direct and personally supervised training with a ~~registered-licensed~~ registered-licensed hearing aid provider or ~~registered-licensed~~ audiologist in ~~the state of~~ Colorado.

BC. A “hearing aid provider associate” ~~—~~ is defined as an individual in training to become a licensed Hearing Aid Provider who has completed a minimum of 300 hours of direct and personally supervised training with on-site supervised practice with a registered-licensed hearing aid provider or licensed audiologist in ~~the state of~~ Colorado and is reported as being competent to the Office of Audiologists-Audiology and Hearing Aid Provider Licensure by a ~~registered-licensed~~ audiologist or hearing aid provider who directly supervised the associate.

D. A “supervisor” must possess an active license and been actively practicing for at least two consecutive years immediately prior to supervising and must be Board certified by the National Board for Certification in Hearing Instrument Sciences (NBCHIS) or a licensed audiologist.

1. The supervisor must not have been disciplined during the past four years.

2. The supervisor may not sponsor more than three trainees at one time.

3. Both the trainee and the supervisor shall immediately notify the program in writing, and provide the reason for any break in, or termination of, the training program.
4. A trainee who loses supervision for any reason shall immediately cease practice and shall not continue in a trainee status with a new supervisor until the trainee receives written approval from the Office of Audiology and Hearing Aid Provider Licensure.
5. The supervisor shall keep a daily log during the direct supervision period, which shall include the hours of instruction, the duties assigned, the total hours worked each week and the type of services performed. This log shall be made available to the Office of Audiology and Hearing Aid Provider Licensure, upon request, and upon completion of the supervision period.

E. No person may practice as a trainee or associate prior to being issued a trainee license by the Office of Audiology and Hearing Aid Provider Licensure. Any work prior to the issuance of a trainee license will not apply as training hours towards the associate status.

CF. Before a hearing aid provider trainee can become a hearing aid provider associate, the hearing aid provider trainee must complete 300 hours of supervised training in the following:

1. ~~taking~~ Taking a case history and review;
2. ~~otoseopy~~ Otoscopy;
3. ~~testing~~ Testing of hearing including air conduction and bone conduction with proper masking when needed;
4. ~~testing~~ Testing of speech including SRT, MCL, UCL, and ~~Discrimination~~ discrimination with proper masking when needed;
5. ~~interpreting~~ Interpreting hearing tests and the making of medical referrals as necessary;
6. ~~taking~~ Taking of standard and in the canal ear impressions;
7. ~~fitting~~ Fitting and post-fitting counseling including the delivery of the hearing aid, insertion and removal of the hearing aid, instruction on changing the batteries, and education to the user and family as to expectations and performance;
8. ~~checking~~ Checking for proper fit and making needed adjustments; and
9. ~~verifying~~ Verifying the hearing aid performance to determine if the hearing aid is correcting and conforming to the hearing loss as expected. This includes but is not limited to the use of real ear measurement, word discrimination, aided ~~vs.~~ versus unaided, or other forms of aided measurements as may be standard in the industry.

DG. A hearing aid provider trainee must be under the personal and direct supervision of the supervising licensed hearing aid provider or audiologist supervised at all times while learning and performing the tasks identified in paragraph ~~C-F~~ above. For purposes of this rule "direct supervision" shall mean supervision that is on the premises and in the same building where the trainee is practicing. At no time shall a hearing aid ~~provider~~ trainee sell a hearing aid independently of the direct and personal supervision of the supervising licensed hearing aid provider or audiologist. ~~perform any of the activities in paragraph C without the on-site, direct supervision of a registered audiologist or hearing aid provider.~~

EH. A hearing aid provider associate may independently engage in the activities described in paragraph F above. But at no time shall a hearing aid associate sell a hearing aid

~~independently of the direct and personal supervision of the supervising licensed hearing aid provider or audiologist. can only become a registered hearing aid provider upon successful completion and passage of the National Competency Examination of the National Board for Certification in Hearing Instrument Sciences. Until such completion of the examination, a hearing aid provider associate may independently engage in the activities described in paragraph C above. However, all hearing aid sales must be reviewed by a registered audiologist or hearing aid provider and all contracts need to be signed by the registered audiologist or hearing aid provider.~~

- ~~FI. A hearing aid provider associate may apply to become a licensed hearing aid provider upon successful completion and passage of the National Competency Examination of the National Board for Certification in Hearing Instrument Sciences. No person may practice as a trainee or associate prior to being issued a temporary registration number by the Audiologist and Hearing Aid Providers Registration. Any work prior to the issuance of a temporary registration will not apply as training hours towards the associate status.~~
- ~~GJ. An individual may remain in trainee or associate status. A hearing aid provider trainee and hearing aid provider associate shall hold a trainee license for no longer than three (3) years from date of issuance of the first temporary registration trainee license or 60 days after successful completion of the National Board for Certification-Hearing Instrument Science ("NBCHIS") examination, whichever comes first.~~

Rule 4 - Written Disclosures to Purchasers

The purpose of this rule is specify the type of written disclosures to be provided to purchasers of hearing aids pursuant to ~~§ Sections~~ 12-5.5-206(4)(a), and 206(5), C.R.S., that will protect such purchasers and that are necessary for the enforcement and administration of the Audiologists and Hearing Aid Providers Act.

- A. ~~Sellers of hearing aids~~The licensee shall identify themselves by listing their name, registration license type (i.e., audiologist or hearing aid provider), and registration license number, business address and telephone number on every contract or purchase agreement for the sale of a hearing aid.
- B. ~~Sellers of hearing aids shall include a statement on all contracts and purchase agreements that complaints can be filed against the seller with the Audiologists and Hearing Aid Providers Registration, and shall include the Registration's address and telephone number.~~Licensees shall include provisions on all contracts and purchase agreements stating the following:
1. Hearing aid providers and audiologists are regulated by the Division of Registrations.
 2. Any complaints can be filed against the Licensee with the Office of Audiology and Hearing Aid Provider Licensure within the Division of Registration.
 3. The Office of Audiology and Hearing Aid Provider Licensure's website, address, and telephone number.
- C. ~~The following written disclosures must be made in order for a seller of hearing aids to retain any money upon a buyer's cancellation and request for a full refund.~~A Licensee shall provide the following disclosures on all contracts and purchase agreements:
1. Section 6-1-701(2)(II) of the Colorado Consumer Protection Act allows a seller of hearing aids to In calculating rescission refunds, the Licensee may retain an itemized amount to cover the "minimum costs of materials used" — by a registrant

- ~~the Licensee and a manufacturer's return fee, but such amount may not be greater than five percent not to exceed 5%~~ of the total charge for the hearing aid.
2. ~~In refund transactions, the Professional services that are itemized in the purchaser's contract are not considered~~ "minimum costs of materials used" ~~subject to the five percent limit referenced in § 6-1-701(2)(e)(II), C.R.S., and include the following actual costs subject to the 5% retainer of costs threshold shall not include professional services such as the following:~~
- a. Ear molds, but not impressions;
 - b. Fitting and consultation fees; and
 - c. Rehabilitation services.
3. ~~All professional services listed in subsection 2 above must clearly be listed and identified as non-refundable, and the exact charge for each non-refundable item and service must be included in the contract at the time of sale. Otherwise, a seller of hearing aids may not retain any monies upon a buyer's cancellation. A provision that clearly identifies all professional services, including but not limited to those listed in subsection 2 above, and the exact charge for each service.~~
4. ~~Minimum costs subject to the five percent ceiling must also be clearly listed as a non-refundable fee with the exact dollar amount included on the contract at the time of sale, but does not require an itemization of the items and services that constitute the minimum cost. Without such disclosure of the minimum cost at the time of the sale, a seller of hearing aids may not retain any monies upon a buyer's cancellation. A statement that clearly identifies all of the costs of materials used that is subject to the 5% retainer of costs.~~
5. The manufacturer's return fee.

Rule 5 - Declaratory Orders

The purpose of this rule is to establish procedures for the handling of requests for declaratory orders filed pursuant to the Colorado Administrative Procedures Act at ~~—~~ § Section 24-4-105(11), C.R.S.

- A. Any person or entity may petition the Director for a declaratory order to terminate controversies or remove uncertainties as to the applicability of any statutory provision or of any rule or order of the Director.
- B. The Director will determine, at her discretion and without notice to petitioner, whether to rule upon any such petition. If the Director determines that she will not rule upon such a petition, the Director shall promptly notify the petitioner of her action and state the reasons for such decision.
- C. In determining whether to rule upon a petition filed pursuant to this rule, the Director will consider the following matters, among others:
 - 1. Whether a ruling on the petition will terminate a controversy or remove uncertainties as to the applicability to petitioner of any statutory provisions or rule or order of the Director.
 - 2. Whether the petition involves any subject, question or issue that is the subject of a formal or informal matter or investigation currently pending before the Director or a court involving one or more petitioners.
 - 3. Whether the petition involves any subject, question or issue that is the subject of a formal or informal matter or investigation currently pending before the Director or a court but not involving any petitioner.

4. Whether the petition seeks a ruling on a moot or hypothetical question or will result in an advisory ruling or opinion.
 5. Whether the petitioner has some other adequate legal remedy, other than an action for declaratory relief pursuant to CRCP 57, which will terminate the controversy or remove any uncertainty as to the applicability to the petitioner of the statute, rule or order in question.
- D. Any petition filed pursuant to this rule shall set forth the following:
1. The name and address of the petitioner and whether the petitioner is ~~registered~~ licensed pursuant to Title 12, Article 5.5.
 2. The statute, rule or order to which the petition relates.
 3. A concise statement of all of the facts necessary to show the nature of the controversy or uncertainty and the manner in which the statute, rule, or order in question applies or potentially applies to the petitioner.
- E. If the Director determines that she will rule on the petition, the following procedures shall apply:
1. The Director may rule upon the petition based solely upon the facts presented in the petition. In such a case:
 - a. Any ruling of the Director will apply only to the extent of the facts presented in the petition and any amendment to the petition.
 - b. The Director may order the petitioner to file a written brief, memorandum or statement of position.
 - c. The Director may set the petition, upon due notice to petitioner, for a non-evidentiary hearing.
 - d. The Director may dispose of the petition on the sole basis of the matters set forth in the petition.
 - e. The Director may request the petitioner to submit additional facts in writing. In such event, such additional facts will be considered as an amendment to the petition.
 - f. The Director may take administrative notice of facts pursuant to the Administrative Procedure Act at ~~—~~ § Section 24-4-105(8), C.R.S., and may utilize her experience, technical competence, and specialized knowledge in the disposition of the petition.
 2. If the Director rules upon the petition without a hearing, she shall promptly notify the petitioner of her decision.
 3. The Director may, at her discretion, set the petition for hearing, upon due notice to petitioner, for the purpose of obtaining additional facts or information or to determine the truth of any facts set forth in the petition or to hear oral argument on the petition. The notice to the petitioner shall set forth, to the extent known, the factual or other matters into which the Director intends to inquire. For the purpose of such a hearing, to the extent necessary, the petitioner shall have the burden of proving all the facts stated in the petition; all of the facts necessary to show the nature of the controversy or uncertainty; and the manner in which the statute, rule, or order in question applies or potentially applies to the petitioner and any other facts the petitioner desires the Director to consider.
- F. The parties to any proceeding pursuant to this rule shall be the Director and the petitioner. Any other person may seek leave of the Director to intervene in such a proceeding, and

leave to intervene will be granted at the sole discretion of the Director. A petition to intervene shall set forth the same matters as are required by Section D of this Rule. Any reference to a “petitioner” in this Rule also refers to any person who has been granted leave to intervene by the Director.

- G. Any declaratory order or other order disposing of a petition pursuant to this Rule shall constitute agency action subject to judicial review pursuant to the Colorado Administrative Procedures Act at —§ Section 24-4-106, C.R.S.

Rule 6 – Requirement for Reinstatement

The purpose of this rule is to state the requirements for reinstatement of an audiologist or hearing aid provider license that has expired pursuant to Sections 12-5.5-103 and 12-5.5-203, C.R.S.

- A. A licensee applying for reinstatement of an expired license shall complete a reinstatement application, pay a reinstatement fee, and attest to the appropriate bond or insurance coverage as required by statute.
- B. If the license has been expired for more than two years from the date of receipt of the reinstatement application, but less than five years, a licensee applying for reinstatement of an expired license shall establish “competency to practice” under Sections 24-34-102(8)(d)(II)(A) and (D) and, 24-34-105, C.R.S. as follows:
1. Verification of licensure in good standing from another state along with verification of active practice in that state for two years of the previous five years from the date of application for reinstatement; OR
 2. Completion of 30 hours of continuing education courses related to the practice of audiology or hearing aid providers during the two years immediately preceding the application for reinstatement. The continuing education must meet the approval of the Director; OR
 3. Supervised practice for a period of no less than six months subject to the terms established by the Director; OR
 4. With regard to Hearing Aid Provider licensees only, retaking and achieving a passing score on the NBCHIS accredited examination within two years immediately preceding submission of an application for reinstatement, OR
 5. By any other means approved by the Director.
- C. An applicant seeking to reinstate a license that has been expired for more than five years is not eligible to complete B(2) of this rule and shall demonstrate “competency to practice” as required by Section 24-34-102(8)(d)(II)(B) and (F), C. R.S. by:
1. Verification of licensure in good standing from another state along with proof of active practice for two years of the previous five years prior to an application for reinstatement; OR
 2. Supervised practice for a period of no less than six months subject to the terms established by the Director; OR
 3. With regard to Hearing Aid Provider licensees only, retaking and achieving a passing score on the NBCHIS accredited examination within two years immediately preceding submission of an application for reinstatement; OR
 4. By any other means approved by the Director.

Rule 7 – Reporting Convictions and Other Adverse Actions

The purpose of this rule is to clarify the procedures for reporting convictions and other adverse actions to include judgments and administrative proceedings pursuant to Section 12-5.5-102, 12-

5.5-102.5, 12-5.5-105(1)(b)(II), (IX), 12-5.5-105(2), 12-5.5-106(5), 12-5.5-202(2), 12-5.5-202(2)(b)(IV), 12-5.5-205(1)(b)(VII), (X), (XII), 12-5.5-205(2) and 12-5.5-206(4), C.R.S.

A. A Licensee, as defined in Sections 12-5.5-101 and 201, C.R.S. including those licensed pursuant to Sections 12-5.5-202.5 and 102.5, shall inform the Office of Audiology and Hearing Aid Provider Licensure, in a manner set forth by the Director, within 30 days of any adverse action. For purposes of this rule, “adverse action” includes the following:

1. Conviction or acceptance of a plea of guilty or nolo contendere or receipt of a deferred sentence in any court to a crime involving fraud, deception, false pretense, theft, misrepresentation, false advertising, or dishonest dealing.
2. In regard to Hearing Aid Providers Associates and Trainees only: a felony conviction under the laws of any state or of the United States. For purposes of this rule, a “conviction” includes, but is not limited to: entry or acceptance to a plea of guilty, nolo contendere (no contest), or receipt of a deferred sentence in any court.
3. A disciplinary action imposed upon the licensee by another jurisdiction which would or could reasonably be considered to be a violation of Part 1 or 2, Article 5.5, Section 12 C.R.S., whether such charges or complaints are pending against the Licensee in another jurisdiction, and whether disciplinary action was taken. For purposes of this rule any disciplinary action by another jurisdiction includes, but not limited to, a revocation, suspension, probation, fine, sanction, or a denial of a license or authorization to practice.
4. Any judgment, award, or settlement of a civil action or arbitration in which there was a final judgment or settlement against the licensee for failing to practice according to commonly accepted professional standards.
5. The notice to the Director shall include the following information:
 - a. If the event is an action by a governmental agency (as described above): the name of the agency, its jurisdiction, the case name, the docket, proceeding or case number by which the event is designated, and a copy of the consent decree, order, or decision;
 - b. If the event is a felony conviction: the court, its jurisdiction, the case name, the case number, a description of the matter or a copy of the indictment or charges, and any plea or verdict entered by the court. The licensee shall also provide to the Director a copy of the imposition of sentence related to the felony conviction and the completion of all terms of the sentence within 90 days of such action;
 - c. If the event concerns a civil action or arbitration proceeding: the court or arbiter, the jurisdiction, the case name, the case number, a description of the matter or a copy of the complaint, and a copy of the verdict, the court or arbitration decision, or, if settled, the settlement agreement and court’s order of dismissal.
6. The licensee may submit a written statement with any notice under this rule to be included in the licensee records.
7. This rule shall apply to any adverse action as described in paragraph A of this rule that occurs on or after the effective date of this rule.

Rule 8 – Duty to Report Information

The purpose of this rule is to clarify the requirement of licensees to notify the Director of a change in submitted information pursuant to Section 24-34-107, C.R.S.

A. The licensee shall inform the Office of Audiology and Hearing Aid Provider Licensure in clear, explicit and unambiguous written statement of any name, address, telephone, or email change within 30 days of the change. The Office of Audiology and Hearing Aid Provider Licensure will not change a licensee's information without explicit written notification from the licensee. Notification by any manner approved by the Division is acceptable.

1. The Division of Registrations maintains one contact address for each licensee, regardless of the number of licenses the licensee may hold.

2. Address change requests for some, but not all communications, or for confidential communications only, are not accepted.

B. The Office of Audiology and Hearing Aid Provider Licensure requires one of the following forms of documentation to change a licensee's name or social security number:

1. Marriage license;

2. Divorce decree;

3. Court order; or

4. Driver's license or social security card with a second form of identification may be acceptable at the discretion of the Division.