



**Dora**  
Department of Regulatory Agencies

**Office of Policy, Research and Regulatory Reform**

**2011 Sunset Review:  
Audiology & Hearing Aid Provider  
Licensure Program**

October 14, 2011





**Executive Director's Office**

Barbara J. Kelley  
Executive Director

John W. Hickenlooper  
Governor

October 14, 2011

Members of the Colorado General Assembly  
c/o the Office of Legislative Legal Services  
State Capitol Building  
Denver, Colorado 80203

Dear Members of the General Assembly:

The mission of the Department of Regulatory Agencies (DORA) is consumer protection. As a part of the Executive Director's Office within DORA, the Office of Policy, Research and Regulatory Reform seeks to fulfill its statutorily mandated responsibility to conduct sunset reviews with a focus on protecting the health, safety and welfare of all Coloradans.

DORA has completed the evaluation of the Colorado Audiology and Hearing Aid Provider Licensure Program. I am pleased to submit this written report, which will be the basis for my office's oral testimony before the 2012 legislative committee of reference. The report is submitted pursuant to section 24-34-104(8)(a), of the Colorado Revised Statutes (C.R.S.), which states in part:

The department of regulatory agencies shall conduct an analysis of the performance of each division, board or agency or each function scheduled for termination under this section...

The department of regulatory agencies shall submit a report and supporting materials to the office of legislative legal services no later than October 15 of the year preceding the date established for termination....

The report discusses the question of whether there is a need for the regulation provided under Article 5.5 of Title 12, C.R.S. The report also discusses the effectiveness of the Director of the Division of Registrations and staff in carrying out the intent of the statutes and makes recommendations for statutory and administrative changes in the event this regulatory program is continued by the General Assembly.

Sincerely,

Barbara J. Kelley  
Executive Director





John W. Hickenlooper  
Governor

Barbara J. Kelley  
Executive Director

## **2011 Sunset Review: Colorado Audiology & Hearing Aid Provider Licensure Program**

### **Summary**

#### ***What Is Regulated?***

Audiologists are healthcare providers who evaluate, diagnose, and treat hearing loss and balance disorders. Hearing aid providers, also called hearing aid dealers or hearing aid dispensers, evaluate hearing, and select, fit, and program hearing aids. Both audiologists and hearing aid providers fit and dispense hearing aids.

#### ***Why Is It Regulated?***

The laws that govern audiologists and hearing aid providers were created to protect consumers from unscrupulous and incompetent practitioners.

#### ***Who Is Regulated?***

Colorado licenses 370 audiologists, 110 hearing aid providers, 19 associate hearing aid providers, and 33 trainee hearing aid providers.

#### ***How Is It Regulated?***

Audiologists must be licensed in order to practice audiology, and hearing aid providers must be licensed in order to sell hearing aids. In order to obtain a license, audiologists must hold a doctorate in audiology, and hearing aid providers must pass the National Competency Exam (NCE) developed by the National Board for Certification in Hearing Instrument Sciences (NBC-HIS). The Director of the Division of Registrations (Director) in the Department of Regulatory Agencies may take action against a licensee for violating regulations or against an individual for unlicensed practice.

#### ***What Does It Cost?***

The fiscal year 09-10 expenditure to oversee this program was \$52,483, and there were 0.3 full-time equivalent employees dedicated to the program.

#### ***What Disciplinary Activity Is There?***

For the period fiscal year 05-06 through 09-10, the Director issued 5 disciplinary actions against audiologists and 32 disciplinary actions against hearing aid providers, including cease and desist orders, letters of admonition, probation, and revocations.

#### ***Where Do I Get the Full Report?***

The full sunset review can be found on the internet at: [www.dora.state.co.us/opr/oprpublications.htm](http://www.dora.state.co.us/opr/oprpublications.htm).

## Key Recommendations

### **Continue the licensure of audiologists and hearing aid providers for seven years, until 2019.**

The laws that govern audiologists and hearing aid providers protect the public by requiring qualifications to ensure competency, and the Director protects the public by ensuring that incompetent audiologists and hearing aid providers are removed from practice. Audiologists or hearing aid providers may harm consumers with unscrupulous sales practices. For example, an audiologist or hearing aid provider may collect money for hearing aids and not provide the promised goods or services. The elderly are especially vulnerable to unscrupulous sales practices.

### **Amend the qualifications required to obtain a hearing aid provider license.**

In order to become a hearing aid provider, a candidate must pass the NCE. This examination does not test for entry-level competency, and it creates some unnecessary complexity in the licensure of hearing aid providers. If the examination were changed to an appropriate entry-level examination, then the regulatory program could be streamlined with the elimination of the associate license.

## Major Contacts Made During This Review

AARP ElderWatch	Colorado Office of the Attorney General
Alexander Graham Bell Association	Colorado School Medicaid Consortium
Better Business Bureau	University of Colorado
CNA Surety	Hartford Bond, Surety and Fidelity
Colorado Academy of Audiology	Hearing Loss Association of America
Colo. Commission for the Deaf, Hard of Hearing	International Hearing Society
Colorado Department of Education	Listen Foundation
Colo. Dept. of Public Health and Environment	NBC-HIS
Colorado Ear, Nose and Throat Society	Pioneer General Insurance Company
Colorado Families for Hands and Voices	Siemens USA
Colorado Hearing Society	Surety and Fidelity Association of America
Colorado Home Intervention Program	University of Northern Colorado

## What is a Sunset Review?

A sunset review is a periodic assessment of state boards, programs, and functions to determine whether or not they should be continued by the legislature. Sunset reviews focus on creating the least restrictive form of regulation consistent with protecting the public. In formulating recommendations, sunset reviews consider the public's right to consistent, high quality professional or occupational services and the ability of businesses to exist and thrive in a competitive market, free from unnecessary regulation.

Sunset Reviews are prepared by:  
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## Table of Contents

Background.....	1
Introduction.....	1
Types of Regulation.....	2
Sunset Process.....	4
Methodology .....	4
Profile of Audiologists and Hearing Aid Providers .....	5
Legal Framework.....	7
History of Regulation .....	7
Summary of Statute & Rules .....	7
Program Description and Administration .....	18
Licensing.....	20
Examinations.....	23
Complaints/Disciplinary Actions .....	24
Analysis and Recommendations .....	29
<i>Recommendation 1 – Continue the licensure of audiologists and hearing aid providers for seven years, until 2019.....</i>	<i>29</i>
<i>Recommendation 2 – Require audiologists to report any payments related to malpractice settlements or judgments.....</i>	<i>31</i>
<i>Recommendation 3 – Create a “general provisions” part of the Act, which includes grounds for discipline that apply to anyone licensed under the Act....</i>	<i>32</i>
<i>Recommendation 4 – Amend the Act relevant to Part 3.....</i>	<i>34</i>
<i>Recommendation 5 – Exempt from the Act any dispenser who is employed by the federal government and does not provide services to the general public..</i>	<i>36</i>
<i>Recommendation 6 – Authorize anyone who has obtained a doctorate in audiology to use the title “Doctor” or “Dr.”, when accompanied by the word “Audiologist”, “Audiology”, “doctor of audiology,” or the letters “Au.D.”, “Ph.D.”, “Sc.D.”, or any other appropriate degree designation.....</i>	<i>37</i>
<i>Recommendation 7 – Eliminate the temporary license for clinical fellows of audiology as obsolete.....</i>	<i>38</i>

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Recommendation 8 – Amend the association authorized in statute to approve accrediting bodies from the Council for Higher Education Accreditation to a more generic provision. ....	38
Recommendation 9 – Amend the language in the requirement for a hearing aid provider license and the definitions for consistency and clarity. ....	39
Recommendation 10 – Amend the qualifications required to obtain a hearing aid provider license.....	41
Recommendation 11 – Create a second path to licensure for hearing aid providers in Colorado. ....	45
Recommendation 12 – Authorize the Director to promulgate rules for licensure by endorsement. ....	48
Recommendation 13 – Require a two-year waiting period in case of a revocation or surrender in lieu of discipline. ....	49
Recommendation 14 – Include as grounds for discipline abuse of health insurance as defined in section 18-13-119, C.R.S. ....	50
Recommendation 15 – Amend the grounds for discipline to include aiding and abetting a violation of the Act, rules, or an order of the Director. ....	51
Recommendation 16 – Include in the grounds for discipline, failure to respond in an honest, materially responsive, and timely manner to a complaint letter sent by the Director.....	52
Recommendation 17 – Authorize the Director to designate a staff person to perform assigned powers and duties authorized in the Act.....	53
Administrative Recommendation 1 – Require hearing aid providers to disclose to consumers when and where to file a claim against a hearing aid provider’s surety bond. ....	54

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## Background

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### Introduction

Enacted in 1976, Colorado's sunset law was the first of its kind in the United States. A sunset provision repeals all or part of a law after a specific date, unless the legislature affirmatively acts to extend it. During the sunset review process, the Department of Regulatory Agencies (DORA) conducts a thorough evaluation of such programs based upon specific statutory criteria<sup>1</sup> and solicits diverse input from a broad spectrum of stakeholders including consumers, government agencies, public advocacy groups, and professional associations.

Sunset reviews are based on the following statutory criteria:

- Whether regulation by the agency is necessary to protect the public health, safety and welfare; whether the conditions which led to the initial regulation have changed; and whether other conditions have arisen which would warrant more, less or the same degree of regulation;
- If regulation is necessary, whether the existing statutes and regulations establish the least restrictive form of regulation consistent with the public interest, considering other available regulatory mechanisms and whether agency rules enhance the public interest and are within the scope of legislative intent;
- Whether the agency operates in the public interest and whether its operation is impeded or enhanced by existing statutes, rules, procedures and practices and any other circumstances, including budgetary, resource and personnel matters;
- Whether an analysis of agency operations indicates that the agency performs its statutory duties efficiently and effectively;
- Whether the composition of the agency's board or commission adequately represents the public interest and whether the agency encourages public participation in its decisions rather than participation only by the people it regulates;
- The economic impact of regulation and, if national economic information is not available, whether the agency stimulates or restricts competition;
- Whether complaint, investigation and disciplinary procedures adequately protect the public and whether final dispositions of complaints are in the public interest or self-serving to the profession;
- Whether the scope of practice of the regulated occupation contributes to the optimum utilization of personnel and whether entry requirements encourage affirmative action;
- Whether administrative and statutory changes are necessary to improve agency operations to enhance the public interest.

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<sup>1</sup> Criteria may be found at § 24-34-104, C.R.S.

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## **Types of Regulation**

Consistent, flexible, and fair regulatory oversight assures consumers, professionals and businesses an equitable playing field. All Coloradans share a long-term, common interest in a fair marketplace where consumers are protected. Regulation, if done appropriately, should protect consumers. If consumers are not better protected and competition is hindered, then regulation may not be the answer.

As regulatory programs relate to individual professionals, such programs typically entail the establishment of minimum standards for initial entry and continued participation in a given profession or occupation. This serves to protect the public from incompetent practitioners. Similarly, such programs provide a vehicle for limiting or removing from practice those practitioners deemed to have harmed the public.

From a practitioner perspective, regulation can lead to increased prestige and higher income. Accordingly, regulatory programs are often championed by those who will be the subject of regulation.

On the other hand, by erecting barriers to entry into a given profession or occupation, even when justified, regulation can serve to restrict the supply of practitioners. This not only limits consumer choice, but can also lead to an increase in the cost of services.

There are also several levels of regulation.

### Licensure

Licensure is the most restrictive form of regulation, yet it provides the greatest level of public protection. Licensing programs typically involve the completion of a prescribed educational program (usually college level or higher) and the passage of an examination that is designed to measure a minimal level of competency. These types of programs usually entail title protection – only those individuals who are properly licensed may use a particular title(s) – and practice exclusivity – only those individuals who are properly licensed may engage in the particular practice. While these requirements can be viewed as barriers to entry, they also afford the highest level of consumer protection in that they ensure that only those who are deemed competent may practice and the public is alerted to those who may practice by the title(s) used.

### Certification

Certification programs offer a level of consumer protection similar to licensing programs, but the barriers to entry are generally lower. The required educational program may be more vocational in nature, but the required examination should still measure a minimal level of competency. Additionally, certification programs typically involve a non-governmental entity that establishes the training requirements and owns and administers the examination. State certification is made conditional upon the individual practitioner obtaining and maintaining the relevant private credential. These types of programs also usually entail title protection and practice exclusivity.



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While the aforementioned requirements can still be viewed as barriers to entry, they afford a level of consumer protection that is lower than a licensing program. They ensure that only those who are deemed competent may practice and the public is alerted to those who may practice by the title(s) used.

### Registration

Registration programs can serve to protect the public with minimal barriers to entry. A typical registration program involves an individual satisfying certain prescribed requirements – typically non-practice related items, such as insurance or the use of a disclosure form – and the state, in turn, placing that individual on the pertinent registry. These types of programs can entail title protection and practice exclusivity. Since the barriers to entry in registration programs are relatively low, registration programs are generally best suited to those professions and occupations where the risk of public harm is relatively low, but nevertheless present. In short, registration programs serve to notify the state of which individuals are engaging in the relevant practice and to notify the public of those who may practice by the title(s) used.

### Title Protection

Finally, title protection programs represent one of the lowest levels of regulation. Only those who satisfy certain prescribed requirements may use the relevant prescribed title(s). Practitioners need not register or otherwise notify the state that they are engaging in the relevant practice, and practice exclusivity does not attach. In other words, anyone may engage in the particular practice, but only those who satisfy the prescribed requirements may use the enumerated title(s). This serves to indirectly ensure a minimal level of competency – depending upon the prescribed preconditions for use of the protected title(s) – and the public is alerted to the qualifications of those who may use the particular title(s).

Licensing, certification and registration programs also typically involve some kind of mechanism for removing individuals from practice when such individuals engage in enumerated proscribed activities. This is generally not the case with title protection programs.

### Regulation of Businesses

Regulatory programs involving businesses are typically in place to enhance public safety, as with a salon or pharmacy. These programs also help to ensure financial solvency and reliability of continued service for consumers, such as with a public utility, a bank or an insurance company.

Activities can involve auditing of certain capital, bookkeeping and other recordkeeping requirements, such as filing quarterly financial statements with the regulator. Other programs may require onsite examinations of financial records, safety features or service records.

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Although these programs are intended to enhance public protection and reliability of service for consumers, costs of compliance are a factor. These administrative costs, if too burdensome, may be passed on to consumers.

### **Sunset Process**

Regulatory programs scheduled for sunset review receive a comprehensive analysis. The review includes a thorough dialogue with agency officials, representatives of the regulated profession and other stakeholders. Anyone can submit input on any upcoming sunrise or sunset review via DORA'S website at: [www.dora.state.co.us/pls/real/OPR\\_Review\\_Comments.Main](http://www.dora.state.co.us/pls/real/OPR_Review_Comments.Main).

The regulatory functions of the Director of the Division of Registrations within DORA (Director and Division, respectively) as enumerated in Article 5.5 of Title 12, Colorado Revised Statutes (C.R.S.), shall terminate on July 1, 2012, unless continued by the General Assembly. During the year prior to this date, it is the duty of DORA to conduct an analysis and evaluation of the administration of the audiology and hearing aid provider licensure program (Program) by the Director pursuant to section 24-34-104, C.R.S.

The purpose of this review is to determine whether the currently prescribed regulation of audiology and hearing aid provider licensure should be continued for the protection of the public and to evaluate the performance of the Director. During this review, the Director must demonstrate that the regulation serves to protect the public health, safety or welfare, and that the regulation is the least restrictive regulation consistent with protecting the public. DORA'S findings and recommendations are submitted via this report to the Office of Legislative Legal Services.

### **Methodology**

As part of this review, DORA staff interviewed Program staff; reviewed Program records including complaint and disciplinary actions; interviewed officials with state professional associations, consumer groups, and health care providers; reviewed Colorado statutes and Director rules; and reviewed other state and federal laws.

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## **Profile of Audiologists and Hearing Aid Providers**

Audiologists are healthcare providers who evaluate, diagnose, and treat hearing loss and balance disorders. They may treat hearing loss by cleaning the ear canal, fitting hearing aids, and fitting and programming cochlear implants (surgically implanted hearing devices). They may also counsel patients on hearing loss, provide training on the use of hearing aids, and teach communications strategies.<sup>2</sup> Audiologists do not prescribe medicine or perform surgery.

In most states, audiologists must obtain at least a master's degree; however, 18 states, including Colorado, require audiologists to obtain a doctorate in order to practice.<sup>3</sup>

Since 2007, master's level programs in audiology are no longer available. Today, audiologists may obtain either a Ph.D. or an Au.D. in audiology. Degree requirements vary widely depending on the program. Although some schools offer "Clinical Ph.D." programs, a Ph.D. is typically a research degree that consists of five to six years of education.<sup>4</sup> Au.D. programs typically consist of four years of education.<sup>5</sup> Additionally, some schools offer an Sc.D. (doctor of science) degree in audiology.

The United States has 70 accredited doctoral programs in audiology. Entrance requirements to audiology programs include courses in English, mathematics, physics, chemistry, biology, psychology, and communication.<sup>6</sup> The University of Colorado offers an Au.D. and a Ph.D. in audiology, and the University of Northern Colorado offers an Au.D. in audiology.

All states — except for Alaska, Colorado, and New Jersey — require audiologists to pass a national examination for licensure.

Hearing aid providers, also called hearing aid dealers or hearing aid dispensers, evaluate hearing and select, fit and program hearing aids.

The qualifications required to be licensed as a hearing aid provider vary from state to state. Hearing aid providers may obtain anywhere from no training or education to a two-year college degree. Many states require candidates to complete some training in hearing aid fitting and dispensing.

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<sup>2</sup> Bureau of Labor Statistics. *Occupational Outlook Handbook, 2010-11 Edition, Audiologists*. Retrieved on October 18, 2010, from [www.bls.gov/oco/ocos085.htm](http://www.bls.gov/oco/ocos085.htm)

<sup>3</sup> Bureau of Labor Statistics. *Occupational Outlook Handbook, 2010-11 Edition, Audiologists*. Retrieved on October 18, 2010, from [www.bls.gov/oco/ocos085.htm](http://www.bls.gov/oco/ocos085.htm)

<sup>4</sup> American Academy of Audiology. *Ph.D. Facts*. Retrieved on May 4, 2011, from [www.audiology.org/education/students/Pages/phdfacts.aspx](http://www.audiology.org/education/students/Pages/phdfacts.aspx)

<sup>5</sup> Bureau of Labor Statistics. *Occupational Outlook Handbook, 2010-11 Edition, Audiologists*. Retrieved on October 18, 2010, from [www.bls.gov/oco/ocos085.htm](http://www.bls.gov/oco/ocos085.htm)

<sup>6</sup> Bureau of Labor Statistics. *Occupational Outlook Handbook, 2010-11 Edition, Audiologists*. Retrieved on October 18, 2010, from [www.bls.gov/oco/ocos085.htm](http://www.bls.gov/oco/ocos085.htm)

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Most states require hearing aid providers to pass a written licensing examination, and some states also require a practical examination. Colorado requires passage of an examination developed by the National Board for Certification in Hearing Instrument Sciences, which is also the national examination to become certified in hearing instrument sciences.

The U.S. Food and Drug Administration classifies a hearing aid as a medical device<sup>7</sup> and requires an examination of hearing loss by a physician within six months prior to obtaining a hearing aid. Anyone 18 or older may waive the requirement for a medical examination.<sup>8</sup>

All states regulate audiologists and hearing aid providers.

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<sup>7</sup> 21 C.F.R. § 801.420.

<sup>8</sup> 21 C.F.R. § 801.421(a).

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## **Legal Framework**

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### ***History of Regulation***

The Board of Hearing Aid Dealers (Board) was created in 1975 in the Division of Registrations (Division) in the Department of Regulatory Agencies (DORA). A license was required for anyone who fit, dispensed, or sold hearing aids. Audiologists were only required to obtain a license to practice audiology if they fit, sold, or dispensed hearing aids. In 1985, the General Assembly sunset the Board after a sunset review found that it was ineffective in protecting consumers and, as an alternative to regulation, the legislature strengthened the Consumer Protection Act (CPA), Article 1 of Title 6, Colorado Revised Statutes (C.R.S.), by adding deceptive trade practices specific to the sale of a hearing aid.

In 1995, a sunrise review revealed that consumers were being harmed by hearing aid providers. The most common consumer complaints were for:

- Refusal to provide a refund as required by law;
- Problems with fittings and repairs; and
- Contract compliance and fraud issues.

In response, the General Assembly created a registration program for audiologists and hearing aid dealers. In the following year, the program was expanded to include the registration of hearing aid dealer trainees.

Since that time, the laws regulating audiologists and hearing aid providers have been strengthened. In 2000, the General Assembly expanded the authority of the Director to issue cease and desist orders, and in 2006, it authorized confidential letters of concern. In 2007, the General Assembly changed the registration program to a licensure program and increased the minimum educational requirement for audiologists from a master's to a doctorate.

In 2007, the General Assembly also created a new license type for hearing aid providers, the associate license, enabling someone who is in training to be a hearing aid provider to fit hearing aids with minimal supervision.

### ***Summary of Statute & Rules***

The laws that govern the regulation of audiologists and hearing aid providers are housed in Article 5.5 of Title 12, C.R.S. (Act). Some of the provisions in the law apply to both professions while other provisions only apply to one license type or the other. Part 1 of the Act (Part 1) concerns the regulation of audiologists, Part 2 of the Act (Part 2) concerns the regulation of hearing aid providers, and Part 3 of the Act (Part 3) concerns deceptive trade practices related to hearing aid sales.

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The Director of the Division (Director) regulates audiologists and hearing aid providers.

The Director has investigative subpoena authority and may seek injunction against anyone violating Part 1 or Part 2.<sup>9</sup>

The Director is charged with promulgating rules necessary to enforce and administer Part 1 and Part 2.<sup>10</sup> Specifically, the Director must promulgate rules that require written disclosures to protect hearing aid buyers. The Director may require additional disclosures in written contracts or separate documents if the Director finds they are necessary to protect hearing aid buyers.<sup>11</sup>

The Director must promulgate rules that require audiologists and hearing aid providers to maintain records of sales for at least seven years. Such records must include the names of customers, the goods or services provided, and the date and price of each transaction. However, hearing aid providers are not required to maintain records of batteries and minor accessories.<sup>12</sup>

The Director is also charged with determining the amount of malpractice coverage audiologists must carry.<sup>13</sup> By rule, audiologists are required to maintain professional liability insurance of at least of \$1 million per claim and \$3 million for all claims in a year.<sup>14</sup>

### Title and Practice Protection

An audiologist must be licensed before performing any audiological services, which include fitting or dispensing any device for the hearing impaired.<sup>15</sup> Likewise, a hearing aid provider must be licensed before selling or negotiating to sell any device for the hearing impaired.<sup>16</sup>

The titles “audiologist,” “hearing and balance audiologist,” and “vestibular audiologist” are protected, including any abbreviation or title implying that someone is an audiologist. The titles of “hearing aid provider” and “hearing aid dispenser” are also protected.<sup>17</sup> Only an individual licensed under the Act may use these titles.

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<sup>9</sup> §§ 12-5.5-106(2), (3) and 12-5.5-206(1), (2), (3), C.R.S.

<sup>10</sup> §§ 12-5.5-106(5) and 12-5.5-206(4), C.R.S.

<sup>11</sup> § 12-5.5-206 (5), C.R.S.

<sup>12</sup> §§ 12-5.5-106(5) and 12-5.5-206(4) and (5), C.R.S.

<sup>13</sup> § 12-5.5-106(4), C.R.S.

<sup>14</sup> 3 CCR 711-1 Audiology and Hearing Aid Provider Licensure, Rule 2.

<sup>15</sup> §§ 12-5.5-102(1) and 12-5.5-101(3.5)(b), C.R.S.

<sup>16</sup> § 12-5.5-202(1), C.R.S.

<sup>17</sup> § 12-5.5-101.6, C.R.S.

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The practice of audiology, according to the Act, means:<sup>18</sup>

The application of principles, methods, and procedures related to the development, disorders, and conditions of human auditory-vestibular system, whether such disorders or conditions are of organic or function origin, including, but not limited to, disorders of hearing, balance, tinnitus, auditory processing, and other neural functions... for the purpose of diagnosing, designing, and implementing audiological management and treatment or other programs for the amelioration of such disorders and conditions [including, but not limited to]:

- Engaging in the practice of prescribing, selecting, specifying, evaluating, assisting in the adjustment to, and dispensing of prosthetic devices for hearing loss, including, but not limited to, hearing aids and hearing assistive devices by means of specialized audiometric equipment or by any other means accepted by the Director;
- Determining work-related hearing loss or impairment, as defined by federal regulations; and
- Consulting with and making referrals to a physician when appropriate.

Audiologists are prohibited from engaging in the practice of medicine.<sup>19</sup>

A hearing aid provider is a person who is engaged in the practice of dispensing, fitting, or dealing in hearing aids.<sup>20</sup>

### Licensure

In order to be licensed as an audiologist, an applicant must submit an application and pay a fee. Among other things, the applicant must provide his or her:<sup>21</sup>

- Education;
- Experience;
- Degrees or credentials;
- Proof of malpractice coverage, if providing services to patients; and
- Length of time and locations of his or her audiology practice.

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<sup>18</sup> § 12-5.5-101(3.5), C.R.S.

<sup>19</sup> § 12-5.5-101.5(2), C.R.S.

<sup>20</sup> § 12-5.5-201(3), C.R.S.

<sup>21</sup> § 12-5.5-102(3), C.R.S.

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An audiologist is defined as having the following credentials:<sup>22</sup>

- A doctorate in audiology from an accredited program;
- A master's with a major emphasis in audiology conferred before July 1, 2007 from an accredited program and a certificate of competency in audiology from a nationally recognized certification agency; or
- A license as a school audiologist from the Colorado Department of Education (CDE).

Audiologists who work in the public schools must be licensed by CDE, and are not required to be licensed by DORA. Only school audiologists who provide audiological services to the general public, outside of the public school system, are required to be licensed by DORA.<sup>23</sup>

An audiology student enrolled in a course of study at an accredited institution and practicing under the supervision of a licensed audiologist is not required to hold a license.<sup>24</sup> The Director must grant a temporary license for 12 months to anyone who is practicing in a clinical fellowship program.<sup>25</sup>

In order to be licensed as a hearing aid provider, an applicant must submit an application and pay a fee. Among other things, the applicant must include in his or her application the location of each office in which he or she is selling hearing aids, and proof of a surety bond,<sup>26</sup> not to exceed \$10,000.<sup>27</sup>

Hearing aid providers may obtain one of three license types: a hearing aid provider license, a trainee license, or an associate license.

A licensed hearing aid provider is defined as having passed the National Competency Exam (NCE) offered by the National Board for Certification in Hearing Instrument Sciences or an equivalent examination determined by the Director.<sup>28</sup>

A person training to be licensed as a hearing aid provider must submit an application to be licensed as a trainee or an associate, pay a fee, and provide verification of training under the direct and personal supervision of an audiologist or a hearing aid provider (sponsor) whose license is in good standing.<sup>29</sup>

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<sup>22</sup> § 12-5.5-101(1), C.R.S.

<sup>23</sup> § 12-5.5-101.5(1), C.R.S.

<sup>24</sup> § 12-5.5-102(4), C.R.S.

<sup>25</sup> § 12-5.5-102.5, C.R.S.

<sup>26</sup> Surety bond: A guarantee of payment in case the principal (licensee) fails to comply with the terms of an agreement.

<sup>27</sup> §§ 12-5.5-202(2)(a) and (b), C.R.S.

<sup>28</sup> § 12-5.5-201(3), C.R.S.

<sup>29</sup> § 12-5.5-202.5(2)(b), C.R.S.



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A trainee or an associate is prohibited from selling hearing aids independently, and a trainee must inform consumers of his or her status as a trainee.<sup>30</sup>

The Director is authorized to promulgate rules to establish the time period a trainee license is valid and the components of the training to be completed.<sup>31</sup>

By rule, a trainee must complete 300 documented hours of onsite, directly supervised training in the following subjects:<sup>32</sup>

- Taking a case history and review;
- Examining the ear with an instrument called an otoscope;
- Testing hearing, including pure-tone air conduction<sup>33</sup> and bone conduction<sup>34</sup> with proper masking<sup>35</sup> when needed;
- Testing speech including speech reception threshold,<sup>36</sup> uncomfortable loudness level,<sup>37</sup> and speech discrimination<sup>38</sup> with proper masking when needed;
- Interpreting hearing tests and making medical referrals as necessary;
- Taking ear impressions suitable for hearing aids and ear molds;
- 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;
- Checking the fit of a hearing aid and making adjustments to a hearing aid; and
- Verifying the hearing aid performance to determine if the hearing aid is correcting and conforming to the hearing loss as expected.

A trainee may be licensed as an associate when the sponsor reports to the Director that the trainee is competent in the above subjects. An associate may independently engage in the subjects required for training, but all hearing aid sales must be reviewed and all contracts must be signed by a licensed audiologist or hearing aid provider.<sup>39</sup>

The trainee and associate license expires after three years, or 60 days after receiving notification of successfully completing the NCE.<sup>40</sup>

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<sup>30</sup> § 12-5.5-202.5(3), C.R.S.

<sup>31</sup> § 12-5.5-202.5(4), C.R.S.

<sup>32</sup> 3 CCR 711-1 Audiology and Hearing Aid Provider Licensure, Rule 3(C).

<sup>33</sup> Pure-tone air conduction: A test to determine the softest tones an individual can hear selected pitches.

<sup>34</sup> Pure-tone bone conduction: A test that is used when the ears are blocked, in which sound signals are sent to the inner ear through vibrations on the forehead or behind the ear.

<sup>35</sup> Masking: A technique in which a noise is emitted into the non-test ear to prevent it from detecting the test signals.

<sup>36</sup> Speech recognition threshold: A test to determine the softest level at which speech is understood and that helps to confirm pure-tone air conduction test results.

<sup>37</sup> Uncomfortable loudness level: A test to determine the loudest level at which speech is understood.

<sup>38</sup> Speech discrimination: A test that determines how well speech is understood when the volume is set at the subject's most comfortable level.

<sup>39</sup> 3 CCR 711-1 Audiology and Hearing Aid Provider Licensure, Rule 3(E).

<sup>40</sup> 3 CCR 711-1 Audiology and Hearing Aid Provider Licensure, Rule 3(G).

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Additionally, an audiologist must document in his or her application any audiology license issued in any other jurisdiction, any license that was suspended or revoked, and any disciplinary action pending against any licenses. Hearing aid providers, trainees, and associates are required to do the same.<sup>41</sup>

The Division must provide each licensed audiologist and hearing aid provider with a unique license number, which must be included on all contracts and receipts for hearing aids.<sup>42</sup>

### Disciplinary Action

The Director may deny, refuse to renew, revoke, or suspend a license; impose a fine up to \$2,500; issue a letter of admonition; place a licensee on probation; or issue a confidential letter of concern to an audiologist or a hearing aid provider for any of the following acts:<sup>43</sup>

- Being convicted of, entering a plea of guilty or no contest, or receiving a deferred sentence in any court to a crime involving fraud, deception, false pretense, theft, misrepresentation, false advertising, or dishonest dealing;
- Failing to comply with a stipulation or an agreement with the Director or a final agency order;
- Violating the CPA;
- Failing to notify the Director of any change in the information statutorily required in the application for a license;
- Causing physical harm to a consumer;
- Failing to practice according to commonly accepted professional standards; and
- Failing to adequately supervise a trainee or an associate.

The following acts are additional grounds for discipline for audiologists only:<sup>44</sup>

- Using false or misleading advertising;
- Making a false or misleading statement or omission in an application for a license;
- Violating Part 1 or the Director's rules;
- Employing a sales agent or employee who violates any provision in Part 1; and
- Providing services beyond the scope of education, experience, skills, or competence.

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<sup>41</sup> §§ 12-5.5-102(3) and 12-5.5-202(2)(b)(IV), C.R.S.

<sup>42</sup> §§ 12-5.5-102(1) and 12-5.5-202(1), C.R.S.

<sup>43</sup> §§ 12-5.5-105 and 12-5.5-205, C.R.S.

<sup>44</sup> § 12-5.5-105(1)(b), C.R.S.

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The following acts are additional grounds for discipline for hearing aid providers only:<sup>45</sup>

- Misrepresenting or concealing a material fact from a consumer;
- Employing any device, scheme, or artifice with the intent to defraud a consumer;
- Failing to account for any funds or assets of a consumer that the hearing aid provider is in control of;
- Refusing to cancel a hearing aid contract if the request was made within 30 days of the consumer's receipt of the hearing aid; and
- Being convicted of, accepting a plea of guilty or no contest, or receiving a deferred sentence in any court to a felony.

Trainees and associates are subject to the same disciplinary provisions as hearing aid providers.<sup>46</sup>

Any disciplinary action imposed in any other jurisdiction is *prima facie* evidence of grounds for discipline, as long as the reasons for the discipline were based on acts that would be defined as grounds for discipline for audiologists or hearing aid providers in Colorado.<sup>47</sup>

Additionally, the Director may issue a cease and desist order to any licensee who he or she determines is an imminent threat to the health and safety of the public, or to any person who is acting or has acted without the required license.<sup>48</sup>

### Deceptive Trade Practices

The CPA protects consumers against deceptive trade practices by any person, including audiologists and hearing aid providers, in the course of their business activities. The Attorney General and the district attorneys of the state are equally responsible for enforcement of the CPA.<sup>49</sup>

Violating Part 3 of the Act is also considered a violation of the CPA.<sup>50</sup> Specifically, an audiologist or hearing aid provider engages in a deceptive trade practice when he or she fails to supply to a hearing aid buyer a receipt that includes:<sup>51</sup>

- The business address;
- The make and serial number of the device;
- The full terms of sale, clearly stated;

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<sup>45</sup> § 12-5.5-205(1)(b), C.R.S.

<sup>46</sup> § 12-5.5-202.5(5), C.R.S.

<sup>47</sup> §§ 12-5.5-105(2) and 12-5.5-205(2), C.R.S.

<sup>48</sup> §§ 12-5.5-107(1)(a) and 12-5.5-205.5(1)(a), C.R.S.

<sup>49</sup> § 6-1-103, C.R.S.

<sup>50</sup> § 6-1-105(1)(yy), C.R.S.

<sup>51</sup> § 12-5.5-302(1)(a), C.R.S.

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- A provision stating that the audiologist or hearing aid provider is not licensed to practice medicine and, therefore, any examination or representation should not be regarded as medical opinion or advice;
  - A provision indicating that audiologists and hearing aid providers are regulated by the Division in DORA; and
  - A provision labeled “warranty” in which the exact warranty terms and periods available from the manufacturer are documented (or an original or photocopy of the original manufacturer’s warranty).

If a hearing aid is sold used, the container and the receipt must be clearly marked as “used” or “reconditioned,” whichever is applicable.<sup>52</sup>

The following provisions in Part 3 only apply to hearing aid providers. A hearing aid provider engages in deceptive trade practices if he or she:<sup>53</sup>

- Falsely represents that a person licensed to practice medicine will be used or available to a consumer;
- Uses the terms “doctor,” “clinic,” “state-licensed clinic,” “state-registered,” “state-certified,” or “state-approved,” or any other term, abbreviation, or symbol that falsely implies that services are provided by persons licensed to practice medicine or that the services are recommended by the State;
- Directly or indirectly pays a person to influence a consumer to purchase products from a licensed hearing aid provider or to refrain from purchasing products from a competitor;
- Dispenses hearing aids without providing the appropriate examination in the fitting of hearing aids;
- Makes a false or misleading statement of fact concerning goods or services or the consumer’s right to cancel with the intention or effect of deterring or preventing the consumer from exercising the consumer’s right to cancel; and
- Charges, collects, or recovers any cost or fee for any good or service represented by the licensed hearing aid provider as free.

A hearing aid provider also engages in a deceptive trade practice if he or she sells a hearing aid without a written prescription or recommendation from a licensed physician. Any person who is 18 years or older may decline the required medical evaluation by presenting a written waiver.<sup>54</sup>

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<sup>52</sup> § 12-5.5-302(1)(a)(l), C.R.S.

<sup>53</sup> §§ 12-5.5-302(1)(f), (g), (h), (i), and (j), C.R.S.

<sup>54</sup> § 12-5.5-302(1)(c)(l), C.R.S.

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A hearing aid provider may only sell a hearing aid to someone under the age of 18 with documentation that the child has been examined by a physician and an audiologist within the six months prior to the fitting.<sup>55</sup>

It is also a deceptive trade practice for a hearing aid provider to sell, provide, dispense, adjust, provide training or teaching in regard to, or otherwise service cochlear implants.<sup>56</sup>

Prior to fitting or dispensing a hearing aid, a hearing aid provider is required to recommend in writing that the consumer consult a licensed physician if any of the following conditions exist:<sup>57</sup>

- Visible deformity of the ear;
- Active drainage of the ear within the previous 90 days;
- Sudden or rapidly progressive hearing loss;
- Acute or chronic dizziness;
- Sudden hearing loss affecting only one ear within the previous 90 days;
- Audiometric air-bone gap equal to or greater than 15 decibels at 500 hertz (Hz), 1,000 Hz, and 2,000 Hz;<sup>58</sup>
- Visible evidence of significant earwax or a foreign body in the ear canal; and
- Pain or discomfort in the ear.

A hearing aid provider engages in a deceptive trade practice unless he or she provides hearing aid buyers with a 30-day rescission period with the following terms:<sup>59</sup>

- Hearing aid buyers have the right to cancel the purchase and receive a full refund, unless the hearing aid was lost or damaged beyond repair while in the buyer's possession; and
- The 30-day rescission period is tolled for any days the licensed hearing aid provider has possession or control of a hearing aid after the original delivery.

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<sup>55</sup> § 12-5.5-302(1)(b), C.R.S.

<sup>56</sup> § 12-5.5-302(1)(c)(II), C.R.S.

<sup>57</sup> § 12-5.5-302(1)(d), C.R.S.

<sup>58</sup> An air-bone gap is characteristic of conductive hearing loss, a medically or surgically treatable form of hearing loss, in which sound is not transmitted to the inner ear.

<sup>59</sup> § 12-5.5-302(1)(e), C.R.S.

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A hearing aid provider must also provide a written receipt or contract that includes the following statement in all capital letters, at least 10-point, bold-faced type:<sup>60</sup>

**THE BUYER HAS THE RIGHT TO CANCEL THIS PURCHASE FOR ANY REASON AT ANY TIME PRIOR TO 12 MIDNIGHT OF THE 30TH CALENDAR DAY AFTER RECEIPT OF THE HEARING AID BY GIVING OR MAILING THE SELLER WRITTEN NOTICE OF CANCELLATION AND BY RETURNING THE HEARING AID, UNLESS THE HEARING AID HAS BEEN SIGNIFICANTLY DAMAGED BEYOND REPAIR WHILE THE HEARING AID WAS IN THE BUYER'S CONTROL. BY LAW, THE SELLER IS ALLOWED TO RETAIN AN ITEMIZED AMOUNT, NOT TO EXCEED FIVE PERCENT OF THE TOTAL CHARGE FOR THE HEARING AID, TO COVER THE COSTS OF A MANUFACTURER'S RETURN FEE AND THE MINIMUM COSTS OF MATERIALS USED BY THE REGISTERED HEARING AID PROVIDER, UNLESS THE HEARING AID IS RETURNED BECAUSE IT IS DEFECTIVE.**

The written receipt or contract must also contain:<sup>61</sup>

- The license number of the hearing aid provider;
- A statement in at least 10-point type that the sale is void and unenforceable if the hearing aid is not delivered within 30 days after the contract is signed or the receipt issued; and
- A statement that the hearing aid provider will promptly refund payment if the hearing aid is not delivered to the consumer within 30 days.

A refund request form must be attached to each receipt. If the hearing aid is sold in the consumer's home, then the licensed hearing aid provider is responsible for arranging the return of the hearing aid.<sup>62</sup>

If the hearing aid is returned for any reason except for a defect in the device, a hearing aid provider may retain an itemized amount, not greater than five percent of the total charge for the hearing aid, to cover the minimum costs of materials used and a manufacturer's return fee.<sup>63</sup>

The provisions relating to deceptive trade practices in the Act do not apply to hearing aids dispensed outside of Colorado as long as the transaction conforms to the laws of the jurisdiction in which the device is sold.<sup>64</sup>

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<sup>60</sup> § 12-5.5-302(1)(e)(III)(A), C.R.S.

<sup>61</sup> § 12-5.5-302(1)(e)(III)(B), C.R.S.

<sup>62</sup> § 12-5.5-302(1)(e)(IV), C.R.S.

<sup>63</sup> § 12-5.5-302(1)(e)(II), C.R.S.

<sup>64</sup> § 12-5.5-304, C.R.S.

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## Federal Regulation

Hearing aids are considered medical devices, and as such, are subject to regulation by the U.S. Food and Drug Administration (FDA). The FDA has promulgated regulations regarding the manufacture and labeling of hearing aids. The FDA also requires an examination by a physician before an audiologist or a hearing aid provider sells a hearing aid although adults have the right to waive a medical examination. Some of the FDA regulations are incorporated into Colorado law in Part 3.

Additionally, the Federal Trade Commission regulates against deceptive advertising and sales practices.

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## Program Description and Administration

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The Director (Director) of the Division of Registrations (Division) within the Colorado Department of Regulatory Agencies (DORA) is vested with the authority to regulate audiologists and hearing aid providers. By policy, the Director delegates specific powers and duties to the director of the Health Services Section within the Division, and to the director of the Audiology and Hearing Aid Provider Licensure Program (Program).<sup>65</sup>

Table 1 illustrates, for the five fiscal years indicated, the expenditures and full-time equivalent (FTE) employees associated with the regulation of audiologists and hearing aid providers.

**Table 1**  
**Agency Fiscal Information**

Fiscal Year	Total Program Expenditures	FTE
05-06	\$33,078.40	0.30
06-07	\$42,666.60	0.25
07-08	\$45,759.76	0.30
08-09	\$58,997.28	0.30
09-10	\$52,483.71	0.30

The fluctuations in expenditures are primarily due to legal fees. In fiscal year 05-06, the Director pursued fewer disciplinary actions than in the following years, resulting in lower legal fees, and in fiscal year 08-09, the Director pursued more disciplinary actions than in other years, resulting in higher legal fees.

The FTE numbers in Table 1 do not include employees in the centralized offices of the Division, which provide licensing, administrative, technical, and investigative support to the Program. However, the cost of those employees is reflected in the total Program expenditures.

For fiscal year 09-10, there were 0.30 FTE allocated to the Program. The Program-dedicated staff includes a section director (0.05 FTE General Professional VI), a Program director (0.15 FTE General Professional V), and an Administrative Assistant III (0.10 FTE).

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<sup>65</sup> Director's Policy 10-2. *Delegation of Authority*. Adopted January 2, 2009. Revised December 30, 2009.



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The section director oversees the Health Services Section, which in addition to the regulation of audiologists and hearing aid providers also includes the regulation of acupuncturists, chiropractors, direct-entry midwives, massage therapists, mental health professionals, occupational therapists, optometrists, physical therapists, and respiratory therapists.

The Program director supervises staff, handles the budget, reviews license applications not approved by the Division's Office of Licensing, reviews complaints, and performs case management duties associated with disciplinary items.

The Administrative Assistant III receives all incoming calls and questions, prepares correspondence, makes preliminary recommendations regarding jurisdiction of complaints, processes complaints, sends out 30-day letters, sends cases to the Office of Investigations for additional information, and handles compliance monitoring of disciplinary cases.

Table 2 shows the fees associated with regulation of audiologists and hearing aid providers for fiscal year 09-10.

**Table 2  
Licensing Fees  
Fiscal Year 09-10**

<b>License Type</b>	<b>Audiologist Fees</b>	<b>Hearing Aid Provider Fees</b>
License by Examination	\$50	\$50
Renewal	\$226	\$326
Late	\$15	\$15
Reinstatement	\$241	\$341

After initial licensure, licenses must be renewed every two years. If a license is not renewed, an audiologist or a hearing aid provider must reinstate his or her license in order to practice.

The fee to be licensed as a trainee is \$25, and the fee to be licensed as an associate is \$15. Hearing aid providers represent a smaller pool of licensees, so their license fees tend to be higher than those for audiologists since the cost of regulation is divided among fewer licensees.

Pursuant to section 24-34-105, Colorado Revised Statutes (C.R.S.), fees are subject to change every July 1 to reflect the estimated cost of the Program.

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## Licensing

The Program regulates the following license types: clinical fellow in audiology (clinical fellow), audiologist, trainee hearing aid provider (trainee), associate hearing aid provider (associate), and hearing aid provider.

**Clinical Fellow** – A candidate who obtained a master’s degree in audiology is required to be licensed as a clinical fellow in order to obtain the clinical experience necessary for a certificate of clinical competency in audiology, which is required for full licensure.

**Audiologist** – A candidate who has obtained a doctorate in audiology is eligible to be fully licensed as an audiologist without any further requirements.

**Trainee** – The trainee license is the first step to become licensed as a hearing aid provider in Colorado. In order to become licensed as a trainee, a candidate must find a licensed audiologist or hearing aid provider who is willing to provide training and supervision. The supervising audiologist or hearing aid provider (sponsor) must provide direct and personal supervision of the trainee, and the sponsor retains ultimate responsibility of the care provided by the trainee and is subject to discipline for failing to adequately supervise a trainee. Trainees may not sell hearing aids independently, and they are required to disclose their status as a trainee to consumers.

**Associate** – The associate license is the second step to become licensed as a hearing aid provider in Colorado. In order to become licensed as an associate, a trainee must complete a minimum of 300 hours of training in specific subjects, and the sponsor must report to the Director that the trainee is competent. An associate is not required to disclose his or her status to consumers, and he or she may perform all the tasks of a fully-licensed hearing aid provider, except for signing purchase agreements. The sponsor is required to review all sales and sign purchase agreements, and the sponsor is subject to discipline for failing to adequately supervise an associate. The associate license expires three years after the issuance of the initial trainee license, or 60 days after an associate receives notification of successfully completing the National Competency Exam (NCE) developed by the National Board for Certification in Hearing Instrument Sciences (NBC-HIS). According to NBC-HIS policy, an associate is not eligible to take the NCE until he or she has attained 15 months of experience fitting hearing aids.

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**Hearing Aid Provider** – Once a trainee or an associate passes the NCE, he or she is eligible to be fully licensed as a hearing aid provider.

In order to obtain any license, an applicant must complete and submit the appropriate application and supporting documentation to the Division's Office of Licensing. A licensing specialist reviews the application and notifies the applicant of any deficiencies. Once the application is complete, a licensing specialist evaluates the application to ensure the applicant meets the requirements. If all the requirements are met, the license is issued. If not, the licensing specialist notifies the applicant in writing, and the application is kept on file for one year.

Table 3 shows the number of new licenses issued to audiologists and clinical fellows over a five-year period.

**Table 3  
New Audiology Licenses**

<b>Fiscal Year</b>	<b>Audiologists</b>	<b>Clinical Fellows</b>
05-06	27	14
06-07	43	4
07-08	35	0
08-09	31	0
09-10	29	0

On average, 33 audiologists (not including clinical fellows) are newly licensed every year. In fiscal year 06-07, the number of new licenses increased considerably. Division staff does not have any explanation for the increase. However, it may be related to the increased requirement for a license that was scheduled to take effect July 2007.

No new clinical fellows have been licensed since fiscal year 06-07. A candidate who obtained a master's degree in audiology conferred prior to July 2007 is required to be licensed as a clinical fellow in order to obtain the clinical experience necessary for a certificate of clinical competency in audiology, a requirement to be fully licensed as an audiologist. However, schools no longer confer master's degrees in audiology, so the fellowship training period is no longer necessary.

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Table 4 shows the total number of licensed audiologists and clinical fellows in Colorado over a five-year period.

**Table 4**  
**Total Audiology Licenses**

<b>Fiscal Year</b>	<b>Audiologists</b>	<b>Clinical Fellows</b>
05-06	288	25
06-07	326	19
07-08	331	1
08-09	377	0
09-10	370	0

The total number of licensed audiologists in Colorado has increased by 22 percent in five years, and no clinical fellows have been licensed since fiscal year 07-08.

Table 5 illustrates the number of newly licensed hearing aid providers, trainees, and associates over a five-year period.

**Table 5**  
**New Hearing Aid Provider Licenses**

<b>Fiscal Year</b>	<b>Trainees</b>	<b>Associates</b>	<b>Hearing Aid Providers</b>
05-06	32	15	11
06-07	21	12	5
07-08	26	16	5
08-09	23	15	6
09-10	19	8	18

The number of newly licensed trainees is about twice the number of newly licensed associates, which indicates either a high number of trainees dropping out or a limited number of trainees being elevated to associate status by their sponsors. Division staff reports that many trainees leave employment without notifying the Division. Some trainees also become licensed as hearing aid providers without applying for an associate license first.

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Table 6 illustrates the total number of licensed trainees, associates, and hearing aid providers over a five-year period.

**Table 6**  
**Total Hearing Aid Provider Licenses**

Fiscal Year	Trainees	Associates	Hearing Aid Providers
05-06	55	26	106
06-07	59	25	104
07-08	52	31	98
08-09	43	25	107
09-10	33	19	110

Since fiscal year 05-06, the number of hearing aid providers has increased slightly. The reason for this slow growth may be due to a number of factors. First, a hearing aid provider may only be licensed after training with a licensed audiologist or hearing aid provider. Second, for the entry-level examination, Colorado requires the examination for national certification, generally recognized as a sign of distinction in the field. Third, pursuant to NBC-HIS requirements, a candidate must work for 15 months in hearing aid sales before he or she is eligible to take the examination.

Audiologists and hearing aid providers renew their licenses every two years, and they are not eligible for licensure by endorsement.<sup>66</sup>

### **Examinations**

To qualify for a license, an audiologist is not required to pass an examination.

A hearing aid provider, on the other hand, is required to pass the NCE, which is a computer-based examination designed to determine a high level of competency in the following areas:<sup>67</sup>

- Patient assessment;
- Hearing testing and analysis;
- Fitting, adjusting, programming, and servicing hearing instruments and equipment; and
- Counseling, rehabilitation, and professional practice.

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<sup>66</sup> Licensure by endorsement allows individuals who are already licensed in another state to obtain a license in Colorado without having to obtain additional training or pass an examination, if the licensure requirements in that state are substantially equivalent to those in Colorado.

<sup>67</sup> National Board for Certification in Hearing Instrument Sciences. "New Computer-Based Competency Exam." Retrieved on February 28, 2011, from [www.nbc-his.com/examinfo.htm](http://www.nbc-his.com/examinfo.htm)

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The NCE is made up of 100 multiple-choice questions,<sup>68</sup> and candidates are allowed two hours to complete the examination. In order to take the examination, candidates must pay an application fee of \$75.00 and an examination fee of \$150.00.<sup>69</sup>

In Colorado, the NCE is offered in Centennial, Denver, Fort Collins, Greeley, La Junta, Lakewood, Littleton, and Pueblo.<sup>70</sup> Most testing sites are available during regular business hours.

Table 7 illustrates the number of examinations administered to Colorado candidates over a four-year period and the percentage of examinees that passed the NCE.

**Table 7**  
**National Competency Exam (NCE)**  
**Colorado Examinees**

Calendar Year	Number of Examinations	Pass Rate
2007	15	33%
2008	6	59%
2009	17	58%
2010	9	87%

Because the number of examinees in Colorado is so small, these numbers are not as significant as they would be with a larger pool of examinees. Nonetheless, the average Colorado pass rate is 59 percent whereas, according to NBC-HIS, the average national pass rate is 71 percent.

NBC-HIS would not provide the national pass rates and number of examinees for each of the past four years because it considers that data proprietary. Additionally, it refused to provide the cut point for passing the examination.

### **Complaints/Disciplinary Actions**

Anyone, including consumers, relatives of consumers, healthcare providers, and the Director, may file a complaint against a licensed audiologist or hearing aid provider or anyone who may have violated Article 5.5 of Title 12, C.R.S. (Act).

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<sup>68</sup> National Board for Certification in Hearing Instrument Sciences. "Exam Composition." Retrieved on February 28, 2011, from [www.nbc-his.com/examinfo.htm](http://www.nbc-his.com/examinfo.htm)

<sup>69</sup> National Board for Certification in Hearing Instrument Sciences. "U.S. and Canadian Fees." Retrieved on February 28, 2011, from [www.nbc-his.com/examrules.htm](http://www.nbc-his.com/examrules.htm)

<sup>70</sup> National Board for Certification in Hearing Instrument Sciences. "NBC Host Locations." Retrieved on February 28, 2011, from [www.nbc-his.com/hostlocations.htm](http://www.nbc-his.com/hostlocations.htm)

Operating under the authority delegated by the Director, staff reviews incoming complaints to determine any possible violations of the Act. If so, staff notifies the licensee of the complaint and allows him or her 30 days to respond to the allegations. When a response is received, staff forwards the complaint and the response, as well as a preliminary recommendation for how the case should be handled, to the Director. Staff might recommend dismissing the case or forwarding the complaint to the Division's Office of Investigations. The Director makes final decisions regarding all actions taken concerning complaints.

Table 8 illustrates the number and types of complaints against audiologists over a five-year period.

**Table 8  
Complaints Against Audiologists**

Nature of Complaints	FY 05-06	FY 06-07	FY 07-08	FY 08-09	FY 09-10
Practicing w/o a License	0	1	2	2	4
Standard of Practice	0	2	0	0	0
Scope of Practice	0	1	0	0	0
Refund Issue/Part 3	1	0	1	1	5
Advertising/Use of Title	2	0	0	0	0
Felony Conviction	0	0	0	0	1
Misinforming Patient	1	0	0	0	0
<b>Total</b>	<b>4</b>	<b>4</b>	<b>3</b>	<b>3</b>	<b>10</b>

Typically, the primary cause for a complaint against a healthcare practitioner is for failing to meet the standard of practice. Audiologists, however, received few complaints related to standard of practice and none that resulted in any discipline. The leading cause for a complaint involving the practice of audiology is for practicing without a license.

In fiscal year 09-10, the number of complaints against audiologists increased considerably compared to the previous four years. In that year, approximately half of the complaints came from consumers and half from the Director. One complaint was filed by another audiologist. In the previous year, only one complaint against an audiologist was filed by a consumer. The rest were filed by the Director.

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Table 9 shows the number of complaints filed against hearing aid providers over the last five fiscal years.

**Table 9**  
**Complaints Against Hearing Aid Providers**

Nature of Complaints	FY 05-06	FY 06-07	FY 07-08	FY 08-09	FY 09-10
Practicing w/o a License	4	3	5	4	0
Standard of Practice	4	4	5	4	2
Scope of Practice	1	1	0	0	0
Refund Issue/Part 3	5	7	8	6	4
Advertising/Use of Title	2	0	1	1	5
Felony Conviction	0	0	0	0	1
No Bond	6	2	0	8	6
<b>Total</b>	<b>22</b>	<b>17</b>	<b>19</b>	<b>23</b>	<b>18</b>

The primary cause for a complaint against a hearing aid provider is for failing to provide a refund for a hearing aid or not complying with Part 3. Hearing aid providers also received complaints for:

- Failing to meet the standard of practice;
- Failing to secure a surety bond; and
- Practicing without a license.

It should be pointed out that complaints under “use of title” in fiscal years 08-09 and 09-10 were filed by audiologists against hearing aid providers for advertising in a phone book under the heading “audiologist,” which is a protected title. A review of the complaint files reveals those complaints were dismissed when the Director determined that the publisher made the error without the knowledge of the hearing aid providers.

Audiologists and hearing aid providers have different grounds for discipline, and the deceptive trade practices are also different for both license types.



Table 10 illustrates the number and types of final actions taken by the Director against audiologists during the five fiscal years indicated.

**Table 10**  
**Final Actions Against Audiologists**

Type of Action	FY 05-06	FY 06-07	FY 07-08	FY 08-09	FY 09-10
Revocation or Surrender	0	0	0	0	1
Suspension	0	0	0	0	0
Stipulations	0	0	0	0	1
Letter of Admonition	0	0	0	1	1
Cease and Desist	1	0	0	0	0
<b>Total Actions</b>	<b>1</b>	<b>0</b>	<b>0</b>	<b>1</b>	<b>3</b>
<i>Dismissals with Letters of Concern</i>	0	1	1	0	1
<b>Total Dismissals</b>	<b>4</b>	<b>5</b>	<b>1</b>	<b>4</b>	<b>6</b>

Because a complaint might be received in one fiscal year and resolved the next, the total number of disciplinary actions and dismissals for a given year might not match the total number of complaints for that year.

The increase in final actions against audiologists in fiscal year 09-10 is related to a higher than average number of complaints in that year.

Table 11 illustrates the number and types of final actions taken by the Director against hearing aid providers during the five years indicated.

**Table 11**  
**Final Actions Against Hearing Aid Providers**

Type of Action	FY 05-06	FY 06-07	FY 07-08	FY 08-09	FY 09-10
Revocation or Surrender	0	0	0	1	3
Suspension	0	0	0	0	0
Stipulations	0	1	1	2	2
Letter of Admonition	1	6	2	0	4
Cease and Desist	1	1	3	1	3
<b>Total Actions</b>	<b>2</b>	<b>8</b>	<b>6</b>	<b>4</b>	<b>12</b>
<i>Dismissals with Letters of Concern</i>	0	2	2	3	2
<b>Total Dismissals</b>	<b>17</b>	<b>10</b>	<b>11</b>	<b>15</b>	<b>14</b>

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Although audiologists represent a larger pool of licensees, they received fewer disciplinary actions than hearing aid providers. The Director issued five disciplinary actions against audiologists, compared to 32 against hearing aid providers.

Complaints against audiologists also resulted in discipline less frequently than complaints against hearing aid providers. Only one-fifth of complaints against audiologists resulted in discipline whereas approximately one-third of complaints against hearing aid providers resulted in discipline.

Table 12 shows the fines collected over a five-year period.

**Table 12**  
**Fines for All License Types**

<b>Fiscal Year</b>	<b>License Type</b>	<b>Amount Collected</b>
05-06	None	\$0
06-07	None	\$0
07-08	1 Hearing Aid Provider	\$500
08-09	1 Audiologist, 1 Hearing Aid Trainee	\$2,730
09-10	1 Audiologist, 2 Hearing Aid Associates	\$6,100

The Director typically issued fines for improper supervision or for working on an expired license for an extended period of time.

Although fining authority has been in place since the inception of the Program, the use of fining authority was unused in fiscal years 05-06 and 06-07. Unlicensed practice complaints in those years resulted in either a cease and desist order or a letter of admonition.

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## **Analysis and Recommendations**

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### ***Recommendation 1 – Continue the licensure of audiologists and hearing aid providers for seven years, until 2019.***

The laws that govern audiologists and hearing aid providers are contained in Article 5.5 of Title 12, Colorado Revised Statutes (C.R.S.) (Act), and the Director (Director) of the Division of Registrations (Division) in the Department of Regulatory Agencies (DORA) is vested with the authority to license and discipline audiologists and hearing aid providers who violate the Act.

Sunset reviews are guided by statutory criteria found in section 24-34-104, C.R.S., and the first criterion asks whether regulation is necessary to protect the health, safety, and welfare of the public.

The Act protects the public by ensuring that audiologists and hearing aid providers are qualified. Audiologists must obtain a doctorate in order to practice, and hearing aid providers must pass an examination.

Audiologists and hearing aid providers may physically damage an ear when making an ear mold. An individual may suffer permanent hearing loss if an audiologist or hearing aid provider does not refer for a medically treatable condition, such as sudden hearing loss in one ear, and an audiologist or hearing aid provider may exacerbate hearing loss if a hearing aid is over amplified.

The Act also protects the public by vesting the Director with the power to sanction or, if necessary, remove from practice incompetent audiologists or hearing aid providers, and the Consumer Protection Act (CPA), Article 1 of Title 6, C.R.S., provides an additional layer of consumer protection against deceptive trade practices in hearing aid sales. The Attorney General and the district attorneys may prosecute a dispenser for deceptive trade practices and provide compensation for multiple consumers. The Director has limited power to obtain compensation for consumers.

Previous sunset reviews found, and complaint files suggest, that audiologists or hearing aid providers may harm consumers with unscrupulous sales practices or by improperly fitting hearing aids. For example, an audiologist or hearing aid provider may collect money for hearing aids and not provide the promised goods or services. An audiologist or hearing aid provider may sell hearing aids that do not work properly and refuse to provide a refund or string the buyer along until the trial period expires. An audiologist or hearing aid provider may tell a consumer that he or she will extend the trial period but not do so, leaving the consumer with hearing aids that he or she does not want or that may not work properly. An audiologist or hearing aid provider may also harm a consumer by selling a hearing aid to anyone who walks in the door whether or not the hearing aid is necessary or will benefit the consumer.

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The elderly are especially vulnerable to unscrupulous sales practices. Hearing loss is one of the most common, chronic health conditions that affect the elderly. The National Institutes of Health estimates that one-third of people aged 65 to 74 and close to one half of those over 75 suffer from some degree of hearing loss.<sup>71</sup> In Colorado, audiologists and hearing aid providers sell hearing aids to the elderly in their homes, in assisted living facilities, in senior centers, and in nursing homes.

The Act protects the public by requiring hearing aid providers to maintain a surety bond.<sup>72</sup>

A surety bond guarantees some compensation for a consumer if a hearing aid provider fails to comply with the requirements in the Act. For example, if a hearing aid provider refuses to provide a refund within the statutorily mandated trial period, then a consumer may be compensated by filing a claim with the hearing aid provider's surety company.

Many successful claims against surety bonds have been filed by hearing aid buyers over the years. A review of the complaint files shows that hearing aid providers often provided refunds to consumers once they were contacted by the Director, but not always. As recently as 2008, a consumer successfully filed a claim against a hearing aid provider's bond and recovered \$3,500.

Therefore, the surety bond requirement continues to be necessary to protect the public from hearing aid providers who do not fulfill the statutorily mandated terms of a purchase agreement.

Obtaining a surety bond is not difficult. A candidate simply applies to a surety company, and the surety company runs a credit check to ensure the candidate is not a high risk. DORA staff found no evidence to support the allegation that there is a shortage of surety companies willing to bond hearing aid providers.

On the surface it appears that the direct harm to consumers in the sale of hearing aids is primarily financial. However, the significant financial and other harm is fundamentally tied to the practice of fitting a hearing aid.

Currently, about 12 percent of hearing aids purchased in the United States end up "in the drawer," meaning they are never worn. This represents over one million hearing aid buyers.<sup>73</sup>

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<sup>71</sup> National Institutes of Health. *Quick Statistics*. Retrieved March 10, 2011, from [www.nidcd.nih.gov/health/statistics/quick.htm](http://www.nidcd.nih.gov/health/statistics/quick.htm)

<sup>72</sup> Surety bond: A guarantee of payment in case the principal (licensee) fails to comply with the terms of an agreement.

<sup>73</sup> S. Kochkin, et. al. (2010), "MarkeTrak VIII: The Impact of the Hearing Healthcare Professional on Hearing Aid User Success," *Hearing Review* April 2010, p.12.

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Audiologists and hearing aid providers must use appropriate tests to evaluate hearing. If they do not, they may sell a hearing aid to someone who may not benefit from it or select a hearing aid that will not adequately compensate for an individual's hearing loss. Audiologists and hearing aid providers should also verify how a hearing aid is actually performing in the ear. Otherwise, they may not determine that a hearing aid is not fit properly.

The quality of life of persons with a hearing impairment increases considerably when they receive hearing aid fittings that are consistent with comprehensive best practices, compared to those who do not.<sup>74</sup>

For these reasons, this review finds that it is especially important to ensure that audiologists and hearing aid providers are qualified to fit and dispense hearing aids.

As authorized in section 24-34-104, C.R.S., the General Assembly may continue this program for any period between 1 and 15 years. Given the numerous recommendations in this report, it is advisable for the General Assembly to review the impact of these changes in seven years.

Therefore, the General Assembly should continue the regulation of audiologists and hearing aid providers for seven years, until 2019.

**Recommendation 2 – Require audiologists to report any payments related to malpractice settlements or judgments.**

Audiologists are currently required to maintain professional liability insurance of \$1 million per claim and \$3 million for all claims in a year. The potential for harm by an audiologist is serious and includes puncturing an ear drum, damaging the ear from taking an impression of the ear canal, and misdiagnosing hearing loss.

Currently, licensees are not required to report any malpractice settlements they make or that are made on their behalf, or malpractice judgments that have been entered against them.

Malpractice cases often provide important information about whether a practitioner is competent to practice. If the underlying facts of a case demonstrate that harm was caused by substandard practice, the Director should be able to determine if any steps are necessary to protect the public. However, under the current requirements, unless a consumer files a complaint, the Director will not obtain knowledge of any malpractice cases.

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<sup>74</sup> S. Kochkin, "MarkeTrak VIII: Patients Report Improved Quality of Life with Hearing Aid Usage," *The Hearing Journal* 64(6), p. 30.

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Other healthcare professions, including, but not limited to, acupuncturists, dentists, physicians, and podiatrists,<sup>75</sup> have provisions that require reporting malpractice settlements and judgments to the respective regulatory authority. As healthcare practitioners, audiologists should have a similar requirement.

Therefore, the General Assembly should require audiologists to report to the Director any malpractice settlements they make or that are made on their behalf, or malpractice judgments that have been entered against them. The report should include the name of the court, the case number, and the names of all parties to the action, and be submitted within 30 days after the execution of the settlement agreement or entry of the final judgment. Any previous malpractice settlements or judgments against a licensee should be reported upon initial licensure and, for those who are already licensed, upon renewal.

***Recommendation 3 – Create a “general provisions” part of the Act, which includes grounds for discipline that apply to anyone licensed under the Act.***

Part 1 and Part 2 of the Act concern the regulation of audiologists and hearing aid providers respectively. Many of the sections in these two parts are almost identical, including:

- Licensing procedures, renewal, and reinstatement;
- Division cash fund;
- Director’s powers and duties;
- Cease and desist orders; and
- Immunity.

Since nearly all of these provisions are identical, these sections should be combined into a new part that applies to both audiologists and hearing aid providers. Creating a general provisions part would eliminate confusion and help improve efficiency in agency operations.

While many of the provisions in Part 1 and Part 2 are the same, certain provisions in the grounds for discipline are unique to each license type.

The following grounds for discipline apply only to audiologists:<sup>76</sup>

- Using false or misleading advertising;
- Making a false or misleading statement or omission in an application for licensure;
- Violating Part 1 or the Director’s rules;
- Employing a sales agent or employee who violates any provision in Part 1; and
- Providing services beyond the scope of education, experience, skills, or competence.

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<sup>75</sup> §§ 10-1-120, 10-1-124, 12-29.5-104(5), and 12-35-129(1)(q) and (r), C.R.S.

<sup>76</sup> § 12-5.5-105(1)(b), C.R.S.

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Each one of these provisions is standard in regulatory programs, and they should be included in the grounds for discipline for both license types.

These grounds for discipline apply only to hearing aid providers:<sup>77</sup>

- Misrepresenting or concealing a material fact from a consumer;
- Employing any device, scheme, or artifice with the intent to defraud a consumer;
- Failing to account for any funds or assets of a consumer that the hearing aid provider is in control of;
- Refusing to cancel a hearing aid contract if the request was made within 30 days of the consumer's receipt of the hearing aid; and
- Being convicted of, entering a plea of guilty or no contest, or receiving a deferred sentence in any court to a felony.

All of these acts are harmful to consumers, and the General Assembly has already determined that they are necessary to protect the public. Since any of these acts will be no less harmful to the public if performed by an audiologist, they should be grounds for discipline for audiologists, too.

More importantly, conviction of a felony is, as a general rule, included in the grounds for discipline. The purpose of regulation is to protect the health, safety, and welfare of the public, and the Director should have the authority to consider the facts of such a conviction to determine whether or not an individual is safe to practice.

The sunset criteria in section 24-34-104, C.R.S., by which all sunset reviews are guided, ask whether statutory changes are necessary to improve agency operations and to enhance the public interest.

Currently, agency operations are impeded by statutory provisions that are internally inconsistent and difficult to understand. Furthermore, the current Act contains gaps that create uneven protection for consumers depending on whether they purchase hearing aids from an audiologist or from a hearing aid provider. In order to create a law that protects all hearing aid buyers and that provides a more level playing field, the grounds for discipline should be consistent for both audiologists and hearing aid providers.

Therefore, the General Assembly should create a general provisions part, which includes grounds for discipline that apply to anyone licensed under the Act.

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<sup>77</sup> § 12-5.5-205(1)(b), C.R.S.

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**Recommendation 4 – Amend the Act relevant to Part 3.**

The 2006 sunset report recommended relocating section 6-1-701, C.R.S., to Part 3 of the Act in order to ensure that all complaints concerning hearing aid sales are filed with the Director. Section 6-1-701, C.R.S., which is now titled Part 3 of the Act (Part 3), concerns deceptive trade practices specifically related to hearing aid sales. Previously, the Attorney General, the several district attorneys, and private litigants enforced these provisions.

Since these provisions were transferred to the Act, three amendments are necessary to clean up the statute relevant to Part 3.

First, Part 3 should apply to all hearing aid sales in Colorado regardless of license type of the dispenser.

The provisions in Part 3 help to protect consumers from unscrupulous hearing aid sales. They include requirements regarding a contract or a purchase agreement, a 30-day trial period, and the requirement for a medical examination before the sale of a hearing aid.

However, audiologists are only required to comply with section 12-5.5-302(1)(a), C.R.S., of Part 3 which requires dispensers to supply a consumer with a receipt for a hearing aid sale. Audiologists are not required to comply with any of the other provisions in Part 3. This is confusing for consumers who may receive one level of protection when dealing with audiologists and another level of protection when dealing with hearing aid providers.

Some of the provisions in Part 3 are derived from the U.S. Food and Drug Administration's regulations.<sup>78</sup> These provisions include the requirement for an individual to obtain a medical evaluation prior to purchasing a hearing aid,<sup>79</sup> and the requirement to refer to a physician in case of eight specific conditions, such as visible deformity of the ear.<sup>80</sup>

Other provisions concern the right of the buyer to cancel a purchase within 30 days and a specific statement regarding the required trial period to be included in the purchase agreement.<sup>81</sup>

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<sup>78</sup> See for comparison 21 C.F.R. § 801.420 and §§ 12-5.5-302(1)(c)(I) and 12-5.5-302(1)(d), C.R.S.

<sup>79</sup> § 12-5.5-302(1)(c)(I), C.R.S.

<sup>80</sup> § 12-5.5-302(1)(d), C.R.S.

<sup>81</sup> § 12-5.5-302(1)(e), C.R.S.



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Additionally, Part 3 prohibits the following acts:

- Representing a service or advice of a person licensed to practice medicine will be available when that is not true;<sup>82</sup>
- Selling a hearing aid without providing the appropriate procedures and tests in fitting a hearing aid;<sup>83</sup>
- Making a misleading statement concerning the buyer's right to cancel a purchase;<sup>84</sup> and
- Charging a fee for any goods or service advertised as free.<sup>85</sup>

Most of the provisions in Part 3 only apply to hearing aid providers. However, audiologists also sell hearing aids. Since these provisions are necessary to protect the public, they should apply to anyone who dispenses a hearing aid.

The following provision should, for obvious reasons, not apply to audiologists. It is considered a deceptive trade practice, in 12-5.5-302(1)(b), C.R.S., to sell

a hearing aid to a child under eighteen years of age without receiving documentation that the child has been examined by a licensed physician and an audiologist within six months prior to the fitting.

Second, committing any of the deceptive trade practices enumerated in Part 3 should be explicit in the grounds for discipline.

Moving these provisions to the Act ensured that all complaints regarding hearing aid sales would be filed with the Director. However, committing any of the deceptive trade practices in Part 3 is not explicitly stated in the grounds for discipline.

In the grounds for discipline, the Director is provided explicit authority to discipline for a violation of the CPA, but not for violating Part 3. Since Part 3 is still considered part of the CPA, the Director does have this authority although it is not clearly stated in the Act. However, since a clear law makes for more efficient and effective enforcement, the Act should clearly state that the Director may discipline a dispenser for committing any of the deceptive trade practices enumerated in Part 3.

Third, the Director should have the authority to promulgate rules regarding Part 3.

Although Part 3 was transferred from the CPA to the Act, the Director was not provided the authority to promulgate rules regarding Part 3. Since the Director must enforce this part of the Act, the Director should have the authority to clarify the law, if necessary.

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<sup>82</sup> § 12-5.5-302(1)(f), C.R.S

<sup>83</sup> § 12-5.5-302(1)(h), C.R.S

<sup>84</sup> § 12-5.5-302(1)(i), C.R.S

<sup>85</sup> § 12-5.5-302(1)(j), C.R.S

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In summary, the General Assembly should:

- Amend Part 3 so that, where appropriate, it applies to all dispensers regardless of license type;
- Explicitly state that committing any of the deceptive trade practices in Part 3 is grounds for discipline; and
- Authorize the Director to promulgate any rules necessary to enforce Part 3.

**Recommendation 5 – Exempt from the Act any dispenser who is employed by the federal government and does not provide services to the general public.**

Typically, practice acts contain a provision that exempts anyone who is an employee of the federal government and does not otherwise provide services to the general public. Practice acts that contain a comparable provision include the licensure programs for dentists, optometrists, physicians, and podiatrists.<sup>86</sup> There is no such provision for audiologists or hearing aid providers.

During the course of this review, DORA staff found that a complaint for unlicensed practice was opened against an audiologist who worked for the U.S. Department of Veterans Affairs (VA). Audiologists are commonly employed at VA facilities, and hearing loss is the number one disability among veterans of Iraq and Afghanistan, according to the VA.<sup>87</sup> In 2009, the VA sold nearly 19 percent of all hearing aids in the United States.<sup>88</sup>

As a federal agency, the VA accepts an audiology license from any U.S. state. Audiologists who are employed by the federal government are subject to the laws where they are licensed, not necessarily where they are practicing. An audiologist who works at the VA hospital in Denver, for example, may be licensed in Maryland. The VA would report any instances of malpractice to the Maryland Board of Examiners for Audiologists, Hearing Aid Dispensers & Speech Language Pathologists.

The VA also has a system to track all the licenses of its employees. If the Maryland board disciplines an audiologist who works at the VA hospital in Denver, the discipline would be reported to the Denver facility.

Such an exemption would not strip the Director of any jurisdiction over dispensers who are licensed in Colorado. By maintaining a license in Colorado, a dispenser would still be subject to the Act and to the Director's authority.

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<sup>86</sup> §§ 12-35-115(1)(c), 12-36-106(3)(i), 12-40-105(1)(b), and 12-32-109(5), C.R.S.

<sup>87</sup> Military.com. *Protect Your Ears, Not Just Mom Advice*. Retrieved September 19, 2011, from [www.military.com/features/0,15240,163732,00.html](http://www.military.com/features/0,15240,163732,00.html)

<sup>88</sup> The Hearing Review. *Hearing Aid Sales Rise by 8.5% in 2009; 4.9% for Private Practices*. Retrieved on April 5, 2011, from [www.hearingreview.com/news/2010-01-22\\_01.asp](http://www.hearingreview.com/news/2010-01-22_01.asp)

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Therefore, the General Assembly should exempt audiologists and hearing aid providers from the requirement to obtain a license to engage in the practice of fitting and dispensing hearing aids in the discharge of their official duties for the U.S. armed forces, U.S. Coast Guard, U.S. public health service, or the VA.

***Recommendation 6 – Authorize anyone who has obtained a doctorate in audiology to use the title “Doctor” or “Dr.,” when accompanied by the word “Audiologist”, “Audiology”, “doctor of audiology,” or the letters “Au.D.,” “Ph.D.,” “Sc.D.,” or any other appropriate degree designation.***

In order to obtain a license, audiologists were once required to obtain a master’s degree. However, master’s programs in audiology are no longer available, so Colorado now requires a doctorate in audiology. Since all newly licensed audiologists have doctorates, many of them are referring to themselves as doctors.

Legally, anyone who has a doctorate from an accredited institution may use the title “Dr.” before his or her name.<sup>89</sup> In healthcare, however, this title implies that a practitioner has a medical degree. It is for this reason that many healthcare providers, who do not have a medical degree, are required by law to qualify the use of the title “doctor,” or its abbreviation, “Dr.”

In Colorado, chiropractors, optometrists, and podiatrists are all required to delineate what the title means.<sup>90</sup> For example, section 12-33-118, C.R.S., reads:

A license to practice chiropractic entitles the holder to use the title “Doctor” or “Dr.” when accompanied by the word “Chiropractor” or the letters “D.C.,” and to use the title of “Doctor of Chiropractic.”

It would be in the best interests of the public for audiologists who use the title “doctor,” or its abbreviation, to delineate what that means.

Therefore, the General Assembly should authorize anyone who has obtained a doctorate in audiology to use the title “Doctor” or “Dr.” when accompanied by the word “Audiologist”, “Audiology”, “doctor of audiology” or the letters “Au.D.,” “Ph.D.,” “Sc.D.,” or any other appropriate degree designation.

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<sup>89</sup> § 6-1-707(1)(a)(III), C.R.S.

<sup>90</sup> §§ 12-33-118, 12-40-104, and 12-32-109(3), C.R.S.

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***Recommendation 7 – Eliminate the temporary license for clinical fellows of audiology as obsolete.***

To be licensed in Colorado, an audiologist with a master's degree conferred prior to July 2007 is required to obtain a certificate in clinical competency. In order to acquire the necessary experience for professional certification, an audiologist must hold a temporary license for clinical fellows. As schools no longer grant master's degrees in audiology, this license type is obsolete.

In Recommendation 12, this report considers the issue of licensing audiologists from other states who have master's degrees.

Therefore, the General Assembly should repeal this license type from the Act.

***Recommendation 8 – Amend the association authorized in statute to approve accrediting bodies from the Council for Higher Education Accreditation to a more generic provision.***

Pursuant to sections 12-5.5-101(1)(a) and (b), C.R.S., audiologists must graduate from an educational program accredited by an agency recognized by the Council for Higher Education Accreditation (CHEA) or its successor, or the U.S. Department of Education.

While the current qualifications to be licensed as an audiologist are suitable, the statutory language could be improved. The practice acts of other healthcare professions, such as athletic trainers and occupational therapists,<sup>91</sup> simply require an applicant to complete an academic program accredited by an agency recognized by the U.S. Secretary of Education. This language would be preferable to the current language in the Act.

Thus, the General Assembly should amend sections 12-5.5-101(1)(a) and (b), C.R.S., to require an applicant to successfully complete the academic requirements of a:

- Doctoral program in audiology that, at the time the applicant was enrolled and graduated, was offered by an institution of higher education or postsecondary education program accredited by a national, regional or state agency recognized by the U.S. Secretary of Education, or another program approved by the Director; or

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<sup>91</sup> §§ 12-29.7-103(1) and 12-40.5-106(1)(a), C.R.S.

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- Master’s program with a major emphasis in audiology that, at the time the applicant was enrolled and graduated, was offered by an institution of higher education or postsecondary education program accredited by a national, regional or state agency recognized by the U.S. Secretary of Education, or another program approved by the Director, and obtained a certificate of competency in audiology from a nationally recognized certification agency.

**Recommendation 9 – Amend the language in the requirement for a hearing aid provider license and the definitions for consistency and clarity.**

Under the Act as currently drafted, there is a potential for harm to consumers in that an unlicensed person could fit hearing aids without having any training or establishing competency. The Act only requires a license to sell a hearing aid. Potentially, all the other functions up to the point of sale could be performed by an unlicensed person.

Fitting a hearing aid involves taking a physical examination of the ear, testing hearing, selecting a hearing aid, making an ear impression, adapting a hearing aid, and counseling and instruction pertaining to the selection, fitting, or adaptation of a hearing aid. Allowing unlicensed persons to perform these tasks puts the public at risk.

Hearing loss is an important public health issue that has a serious impact on the quality of life of an individual. People who suffer hearing loss may retreat from social situations because, for example, they do not understand jokes or cannot keep up with fast-paced conversations, and their lives could be endangered because they do not hear a speeding car or a fire alarm.

People who suffer hearing loss also have much higher rates of unemployment and decreased levels of income than people with normal hearing, and hearing aids that are appropriately fitted have been shown to mitigate this disparity.<sup>92,93</sup> Additionally, in the elderly, hearing loss is associated with increased cognitive decline and dementia.<sup>94</sup>

Because hearing loss impacts an individual’s life in such a profound way, it is important to ensure that anyone who sells a hearing aid is qualified, skilled, and competent.

In 1975, when the first regulatory program was created for hearing aid providers, the law required a license for anyone who sold, fit or dispensed a hearing aid. The program was eliminated in 1985 when a sunset review found that the Board of Hearing Aid Dealers did not effectively protect consumers. When it was reenacted in 1995, a license was simply required for anyone who sold a hearing aid.

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<sup>92</sup> D. Dalton, *et al.* (2003), “The Impact of Hearing Loss on Quality of Life in Older Adults,” *The Gerontologist*, 43(5), p. 667.

<sup>93</sup> S. Kochkin (2010), “MarkeTrak VIII: The Efficacy of Hearing Aids in Achieving Compensation Equity in the Workplace,” *The Hearing Journal*, April 2010, p.19.

<sup>94</sup> F. Lin (2011), “Hearing Loss and Incident Dementia,” *Archives of Neurology*, 63(2), p. 218.

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It is even more important today than it was in the 1970's for a hearing aid provider to be qualified to fit a hearing aid.

In the 1970's, hearing aid providers could only adjust a hearing aid by turning the amplification up or down with a screwdriver. Today, hearing aids are high-tech devices with hundreds of different settings. If a hearing evaluation is not done properly, a computer program will calibrate a hearing aid according to incorrect specifications, and the hearing aid provider may dismiss any complaints from the buyer with the idea that the buyer's expectations are too high.

There is a perception among hearing aid providers that this program for the most part protects the public from financial harm. While it may be that the direct harm to consumers in the sale of hearing aids is primarily financial, the financial harm is fundamentally tied to the practice of fitting a hearing aid.

Currently, it is estimated that about 12 percent of hearing aids purchased in the United States end up "in the drawer," meaning they are never worn. This represents over one million hearing aid buyers.<sup>95</sup>

Hearing aid providers must use appropriate tests to evaluate hearing. If they do not, they may sell a hearing aid to someone who may not benefit from it or select a hearing aid that will not adequately compensate for an individual's hearing loss. A hearing aid provider should also verify how a hearing aid is actually performing in the ear. Otherwise, they may not determine that a hearing aid is not fit properly.

The quality of life of persons with a hearing impairment increases considerably when they receive hearing aid fittings that are consistent with comprehensive best practices, compared to those who do not.<sup>96</sup>

All states require a license for the sale of a hearing aid, and most states specifically require a license for the fitting of a hearing aid. Only Alaska, Colorado, and New Hampshire have laws that are silent on this point.

The sunset criteria, established in section 24-34-104, C.R.S., direct DORA staff to determine whether regulation is necessary to protect the public; whether the conditions which led to the initial regulation have changed; and whether conditions warrant more, less, or the same degree of regulation.

Ensuring that practitioners are qualified, skilled, and competent to fit a hearing aid is necessary to protect the health, safety, and welfare of persons with hearing loss.

Therefore, the General Assembly should require a license to fit and dispense a hearing aid and define what these terms mean.

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<sup>95</sup> S. Kochkin, et al. (2010), "MarkeTrak VIII: The Impact of the Hearing Healthcare Professional on Hearing Aid User Success," *Hearing Review*, 17(4), p.12.

<sup>96</sup> S. Kochkin (2009), "MarkeTrak VIII: Patients Report Improved Quality of Life with Hearing Aid Usage," *The Hearing Journal* 64(6), p. 30.

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Additionally, the Act is internally inconsistent in its terminology and definitions, and Part 3 contains many definitions that are not included in Part 2. The Act should be amended to create more consistency between Part 2 and Part 3 and to clarify the meaning of important terms, such as “hearing aid,” that are currently undefined in Part 2.

Finally, in most practice acts, the definition of what a practitioner does and the qualifications for a license are separate provisions. In section 12-5.5-201(3), C.R.S., the Act includes the qualifications in the definition of what a hearing aid provider does. For the sake of clarity, the definition of a hearing aid provider and the qualifications for a license should be defined separately.

Therefore, the General Assembly should:

- Define a hearing aid provider as someone who fits and dispenses hearing aids;
- Require a license to fit or dispense a hearing aid, or to advertise or represent oneself as a person who fits or dispenses hearing aids;
- Define what it means to fit and dispense a hearing aid;
- Make the definitions in Part 3 consistent with those in Part 2; and
- Create separate provisions for the qualifications required for a license and the definition of a hearing aid provider.

***Recommendation 10 – Amend the qualifications required to obtain a hearing aid provider license.***

Currently there are three levels of licensure for hearing aid providers:

- The trainee hearing aid provider (trainee);
- The associate hearing aid provider (associate); and
- The hearing aid provider.

In order to become a hearing aid provider, a candidate must pass the National Competency Exam (NCE), an examination developed by the National Board for Certification in Hearing Instrument Sciences (NBC-HIS). The use of the NCE creates some unnecessary complexity in regulating hearing aid providers, which this recommendation attempts to resolve.

NBC-HIS requires candidates to attain at least 15 months of experience fitting hearing aids before they are eligible to take the examination. In order to obtain this experience, candidates must find either an audiologist or a hearing aid provider to train them. Thus, the trainee license is necessary.

The extended training period is difficult for a business because trainees cannot sell hearing aids without direct supervision, and they must disclose their status as a trainee to hearing aid buyers. For this reason, the associate license was created.

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In order to become licensed as an associate, a trainee must complete a minimum of 300 hours of training in specific subjects, and the sponsor must report to the Director that the trainee is competent. An associate is not required to disclose his or her status to consumers.

As a practical matter associates may perform all the tasks of a fully-licensed hearing aid provider, except for signing purchase agreements, but they are not required to pass an examination that tests competency. By rule, the training period, which includes the time during which both the trainee and the associate licenses are held, expires three years after the initial trainee license is issued.

The NCE, despite its name, is not a licensing examination. Rather it is an examination for professional certification that a hearing aid provider may choose to obtain in order to demonstrate skill and knowledge above the entry level. In other states, hearing aid providers must work with a full license for 15 months fitting hearing aids before they are eligible to take the NCE, and any experience in training does not count towards the 15-month requirement. In Colorado, since the examination is required in order to be fully licensed, the NBC-HIS makes an exception. Instead, NBC-HIS requires 15 months of training before a Colorado candidate is eligible to take the examination.

Although a few states do require professional certification as a condition of licensure, Colorado is the only state that uses the NCE as the state licensure examination.

Requiring applicants to pass an examination for professional certification is akin to requiring professional certification. Professional certification is a designation granted by a professional association or educational organization to demonstrate advanced achievement in a profession, occupation, or trade. Typically, Colorado does not require professional certification as a condition of initial licensure for a number of reasons. It excludes otherwise qualified candidates from entering the field, and limits the number of entry-level candidates. Such a requirement tends to protect the market for those who are already in the field, restricting competition and increasing costs for consumers.

A review of the examination data demonstrates this problem. Over a four-year period, the percentage of examinees that passed the examination in Colorado was 59 percent, compared to an average national pass rate of 71 percent. In 2007, the Colorado pass rate was as low as 33 percent.

A pass rate as low as 33 percent may indicate a couple of things. First, it may indicate that examinees are not prepared to pass the examination, perhaps demonstrating a problem with training. Second, it could indicate the examination is acting as a barrier to the profession rather than one that ensures entry-level proficiency. It is reasonable to conclude that the low pass rate is simply due to the fact that the examination is not being used for the purpose for which it was created.

The NBC-HIS concedes that the NCE is not an appropriate examination for licensure.



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While the statute allows the Director to choose an equivalent examination, there are none for the Director to choose since this examination was developed for professional certification, rather than for licensure.

Additionally, naming the examination in statute is problematic because it creates an inflexible regulatory program. A particular examination might be the best in the industry at the time the statute is enacted, but that status can change over time. The Director should be able to promulgate rules to require a different examination if one ceases to be relevant to the profession; if one no longer protects the public's health, safety, and welfare; or if the professional association develops discriminatory policies.

Thirty-eight states require passage of the International Licensing Examination (ILE), developed by the International Hearing Society (IHS). The ILE, unlike the NCE, was created expressly to demonstrate entry-level competency.

The ILE tests minimal competency in the following areas:

- Assessing presenting problem and needs;
- Testing and analyzing hearing;
- Prescribing and analyzing a hearing aid;
- Fitting, adjusting and servicing a hearing aid; and
- Educating and maintaining professional relations.

Some may argue that this recommendation will lower the standards for entering the profession. However, that position does not take into account that, at this time, associates are not required to pass an entry-level competency examination although they are essentially performing the same work as a fully-licensed hearing aid provider.

A competency examination should establish that an individual has a minimum level of knowledge to practice safely. Competency includes skills such as taking an ear impression, evaluating hearing loss, looking for any red flags which would require a referral to a medical doctor, and programming a hearing aid. Allowing someone to perform these tasks when they cannot pass an entry-level examination puts individuals with hearing loss at risk of incompetent or unskilled practice.

Since it creates a situation in which individuals who have not passed an entry-level examination are allowed to practice, the current examination may, in fact, be doing little to protect the public.

For these reasons, the General Assembly should repeal the requirement for a hearing aid provider to pass an examination developed by NBC-HIS and require the Director to determine an appropriate entry-level examination.

If the examination is changed, the 15 months of fitting experience required by the NBC-HIS would no longer be mandatory. Provided other requirements have been satisfied, a hearing aid provider could potentially sit for an examination and start selling hearing aids without obtaining any practical experience at all.

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Maintaining a standard of practice is necessary in order to protect the hearing impaired against unskilled practice. Without some training, the standard of practice in Colorado could be at risk. The question is: What is the least restrictive training requirement necessary to protect the public?

The current *de facto* training period in Colorado is 15 months. However, by rule, the Director only requires trainees to complete 300 hours of on-site supervised training before they can work as an associate, performing nearly all of the tasks of a fully licensed hearing aid provider, except for signing contracts.<sup>97</sup> Three hundred hours is less than two months of full-time work.

While there are outliers, training requirements in other states normally fall between six months and one year. A training period of six months or one year would be consistent with other states and would be less restrictive than the current *de facto* requirement.

As mentioned earlier, the current examination requirement creates a situation in which the training license, including both the trainee and the associate license type, is artificially extended to three years. If the examination were changed to an appropriate entry-level examination, then a three-year training license would be excessive.

The current law also does not have any provision to deny a new application for a license if an individual has failed to take or pass the examination during the three years allowed for a training license. Some associates simply apply for a new training license when their license expires, creating a never-ending “training period.” A number of trainees and associates have worked for extended periods of time without passing a competency examination, some for as long as 10 years.

In most states, a training license expires after one or two years. A two-year training license should be sufficient for most candidates to complete training and to pass an examination.

Therefore, the General Assembly should authorize a two-year training license and authorize the Director to deny any subsequent applications for a training license if the trainee fails to pass an examination.

If such changes are made, the associate license type will be obsolete because the trainee license would allow sufficient time for a trainee to complete the required six-month training period and pass an examination. Other states have similar training models for hearing aid providers and do not require an intermediate license type, and there is no compelling reason to maintain it in Colorado.

The Director already has the authority to promulgate all rules necessary for the administration and enforcement of the training license, including specifying any components of training to be required.

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<sup>97</sup> 3 CCR 711-1 Audiology and Hearing Aid Provider Licensure, Rule 3.

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In summary, the General Assembly should:

- Repeal the requirement for a hearing aid provider to pass an examination developed by NBC-HIS;
- Require the Director to determine an appropriate entry-level examination;
- Require a minimum six-month training period;
- Authorize a two-year training license;
- Authorize the Director to deny any subsequent applications for a training license if the trainee fails to take or pass an examination; and
- Eliminate the associate license type as obsolete.

**Recommendation 11 – Create a second path to licensure for hearing aid providers in Colorado.**

In 1995, when the regulation of hearing aid providers resumed, a fully-digital hearing aid was not available on the market. By 2005, digital technology had replaced analog technology in approximately 90 percent of all hearing aids. Hearing aids today are digital, high-tech devices with hundreds of different settings. They come with directional microphones, feedback suppression, Bluetooth capability, multiple channels, and options for assisted listening devices, such as telecoils.

Hearing aids have improved dramatically over the last few decades, but, according to a leading trade journal, the quality of hearing aid fitting has not. Although the professional associations agree on certain standards for fitting hearing aids, many of these standards are not consistently followed.<sup>98</sup>

As previously noted, 12 percent of hearing aids purchased in the United States end up “in the drawer,” meaning they are never worn, representing over one million hearing aid buyers.<sup>99</sup>

If hearing is not properly evaluated, the computer will program a hearing aid according to incorrect specifications. The hearing aid provider may look at the audiogram<sup>100</sup> and assume that complaints from the consumer regarding sound quality are due to unreasonable expectations rather than a poor fitting.

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<sup>98</sup> S. Kochkin, et al. (2010), “MarkeTrak VIII: The Impact of the Hearing Healthcare Professional on Hearing Aid User Success,” *The Hearing Review* 17(4), p. 14.

<sup>99</sup> S. Kochkin, et al. (2010), “MarkeTrak VIII: The Impact of the Hearing Healthcare Professional on Hearing Aid User Success,” *The Hearing Review* 17(4), p.12.

<sup>100</sup> Audiogram: The results of a hearing evaluation, including a graph that charts an individual’s hearing at certain frequencies and decibels.

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Some of the mistakes that are commonly made in a hearing aid fitting include, but are not limited to:<sup>101</sup>

- Failing to verify the fitting;
- Assuming the manufacturer's default settings are correct for each person;
- Not providing appropriate counseling;
- Not revisiting the settings over time; and
- Failing to use newer tests to help with selection, fitting, and counseling.

In most states, hearing aid providers receive on the job training and pass an examination in order to practice. Some states now require hearing aid providers to obtain education beyond an apprenticeship. The following states require a two-year degree in hearing aid fitting and dispensing, or hearing science: Illinois, Missouri, Nevada, and Washington. In other states, such as Arkansas, New Hampshire, and New Jersey, education provides a second path to licensure.

Washington State has required an associate degree in hearing aid fitting and dispensing since 2003. It currently has two college programs, one that is a distance learning program and the other that is classroom-based.

Some of the courses in these programs are:

- Anatomy and physiology;
- Safety practices;
- Acoustics;
- Hearing assessment;
- Audiometric interpretation;
- Disorders of the auditory system;
- Hearing aids and instruments;
- Aural rehabilitation; and
- Hearing aid service and repair.

Students in these programs are also required to obtain practical experience by working at a clinic on campus and through internships. Since other states have already created curriculum for hearing aid fitting and dispensing, it should not be difficult for Colorado educators to develop a program here. A model exists.

An educational program in hearing aid fitting and dispensing could help create a more consistent and improved standard of care among hearing aid providers.

Since these programs are already available in other states, Colorado should at a minimum allow graduates from these programs to obtain a license. The question is: Should hearing aid providers be required to graduate from such a program?

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<sup>101</sup> S. Kochkin, et al. (2010), "MarkeTrak VIII: The Impact of the Hearing Healthcare Professional on Hearing Aid User Success," *The Hearing Review* 17(4), p.14.

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Will consumers be harmed if education is not required? There is only anecdotal evidence of actual, direct physical harm to consumers, such as a damaged ear from making an ear mold or a perforated ear drum from removing ear wax. However, according to a leading trade journal, the standard of care in hearing aid fitting is inconsistent.

Hearing aid sales are already on the rise. Between 2000 and 2009, hearing aid sales increased 35 percent despite the economic downturn.<sup>102</sup> Historically, only one in five persons with hearing loss wore hearing aids. Today, that ratio is one in four.<sup>103</sup>

Much of the resistance to buying hearing aids has to do with the reputation of the hearing aid industry. According to one report, more than 4 million people, who could benefit from hearing aids, refuse to purchase them because of the experience of friends and relatives.<sup>104</sup>

In order to meet the increased demand of hearing aid sales and to maintain healthy competition, it will be important for hearing aid providers to maintain pace with the growing market. An educational program could help ensure a steady flow of hearing aid providers and meet the marketplace demand.

In addition to ensuring services for the hearing impaired over the next 20 years, an educational program in hearing aid fitting and dispensing could benefit the industry overall by helping to screen trainees first.

The current path to licensure shows an especially high rate of attrition among trainees. Over a period of five years, 63 percent of trainees failed to obtain a full license. An educational program could help lower the attrition rate and reduce some of the wasted resources expended to train new workers. An intern who has already dedicated time learning about a field will be more committed and easier to train than a complete beginner with no preparation.

Healthy People 2020, sponsored by the U.S. Department of Health and Human Services, is a national campaign to identify and reduce the most significant preventable health threats within the United States. Creating an educational program that improves hearing aid sales could help Colorado meet the Healthy People 2020 objective to increase the rate of adults with hearing loss who use a hearing aid.

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<sup>102</sup> Hearing Review. *Hearing Aid Sales Rise by 8.5% in 2009; 4.9% for Private Practices*. Retrieved on April 5, 2011, from [www.hearingreview.com/news/2010-01-22\\_01.asp](http://www.hearingreview.com/news/2010-01-22_01.asp)

<sup>103</sup> S. Kochkin (2009), "MarkeTrak VIII: 25-Year Trends in the Hearing Health Market," *The Hearing Review* 16(10), p.16.

<sup>104</sup> S. Kochkin, et al. (2010), "MarkeTrak VIII: The Impact of the Hearing Healthcare Professional on Hearing Aid User Success," *The Hearing Review* 17(4), p.12.

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Currently, under the Act, hearing aid providers are required to pass an examination, and in order to do so, by NBC-HIS policy, they must complete a minimum of 15 months of training. Recommendation 10 proposes changing the examination and requiring a minimum of six months of training with a licensed audiologist or hearing aid provider. Consequently, the first path to licensure would require passage of an examination and completion of six months of training.

The second path to licensure would be consistent with other states that require a degree in hearing aid fitting and dispensing from an accredited program and passage of an examination. Creating a second path would ensure that qualified persons from other states who graduated from such a program would be able to obtain a license in Colorado. It would also create an opportunity for a community college to create a program here in Colorado.

Therefore, the General Assembly should create two paths to licensure that require:

- Completion of a minimum of six months of training with a licensed audiologist or hearing aid provider and passage of an examination approved by the Director; or
- An associate's degree in hearing aid fitting and dispensing that, at the time the applicant was enrolled and graduated, was offered by an institution of higher education or a postsecondary education program accredited by a national, regional or state agency recognized by the U.S. Secretary of Education, or a program approved by the Director; and passage of an examination approved by the Director.

***Recommendation 12 – Authorize the Director to promulgate rules for licensure by endorsement.***

Most regulatory programs have the authority to issue a license to applicants who are licensed in other states if they present credentials and qualifications that are substantially equivalent to those required for licensure in Colorado. However, there is no such provision in place for audiologists or for hearing aid providers in the Act.

It is important to have a mechanism to license individuals who have been practicing competently and safely in other jurisdictions. Otherwise, the licensure process may be unnecessarily restrictive.

For example, in one case, a hearing aid provider had been practicing in another state for many years and was moving to Colorado. In order to be licensed here he was required to pass the NCE. Since he had not done so before moving here, he had to find someone willing to sponsor him, apply for a training license, study for a new examination, pay the fees to take the NCE, and apply for certification through NBC-HIS, and then pass the examination.

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This individual had already been working in another state for a number of years and did not have any disciplinary action against his license. The previous state requires passage of a written examination, a practical examination, and a one-year apprenticeship.

The law should provide a path for this and similarly situated applicants to be licensed in Colorado by presenting proof of a license in good standing in a state with substantially equivalent requirements for licensure. However, under current law, the Director cannot make that decision. In order to do so, the General Assembly must authorize some mechanism for licensure by endorsement, and the Director must then establish rules that specify what constitutes substantially equivalent credentials and qualifications.

If Colorado requires an examination, then substantially equivalent credentials may include successful passage of a different entry-level examination required by the state in which the applicant is already licensed. If Colorado establishes educational requirements that are more rigorous than other states, professional certification and, or a certain number of years working in the profession could be substituted.

The criteria in section 24-34-104, C.R.S., which guide sunset reviews, ask whether statutory changes are necessary to improve agency operations and to enhance the public interest. Licensure by endorsement is in the public interest because it allows qualified audiologists and hearing aid providers to move to Colorado without unnecessary barriers, and it increases the number of service providers available to Colorado residents.

The General Assembly should, therefore, authorize the Director to promulgate rules for licensure by endorsement for applicants who have a license in good standing in another state if the requirements for a license in that state are substantially equivalent to requirements in Colorado.

***Recommendation 13 – Require a two-year waiting period in case of a revocation or surrender in lieu of discipline.***

Currently, the laws governing audiologists and hearing aid providers do not require a waiting period when the Director revokes a license.

Requiring individuals to wait a specified period before reapplying enhances public protection by assuring an individual possesses minimal competency when they re-enter the workforce. Given the severity of the violations that result in a revocation or the surrender of a license, and the amount of time and resources it takes to process revocations and surrenders, two years is an appropriate waiting period.

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Most other healthcare practitioners who have a license revoked, or who surrender a license in lieu of discipline, must wait two years to reapply for licensure. Some of these practitioners include dentists, direct-entry midwives, optometrists, podiatrists, and pharmacists.<sup>105</sup>

The General Assembly should establish a two-year waiting period for any audiologist or hearing aid provider whose license has been revoked, or who has surrendered a license in lieu of disciplinary action.

**Recommendation 14 – Include as grounds for discipline abuse of health insurance as defined in section 18-13-119, C.R.S.**

Abuse of health insurance, as it is defined in section 18-13-119, C.R.S., concerns a business practice of waiving insurance copayments and deductibles. The statute states that this practice is not in the public interest because it increases healthcare costs by decreasing the incentive for consumers to be conscious of healthcare costs.<sup>106</sup>

The General Assembly, in the criminal code, declared that

Such business practices are illegal and that violation thereof or the advertising thereof shall be grounds for disciplinary actions.<sup>107</sup>

Abuse of health insurance by a healthcare provider is a Class 1 petty offense, which carries a potential sentence of six months in jail and fines up to \$500.

Audiologists and hearing aid providers collect payment from health insurance companies for services such as testing hearing. Private health insurance companies may also provide some coverage for hearing aids for adults, and they are required to provide some coverage of hearing aids for minors.

The Director has the authority to discipline audiologists and hearing aid providers for certain criminal offenses, including:<sup>108</sup>

Conviction or [entering] 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.

The Director also has the authority to discipline a hearing aid provider for “conviction or acceptance of a plea of guilty or nolo contendere or receipt of a deferred sentence in any court to a felony.”<sup>109</sup>

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<sup>105</sup> §§ 12-35-129(2), 12-37-103(4.5), 12-40-119(2.3), 12-32-108.5(3), and 12-22-116(9), C.R.S.

<sup>106</sup> § 18-13-119(1)(b), C.R.S.

<sup>107</sup> § 18-13-119(2), C.R.S.

<sup>108</sup> §§ 12-5.5-105(1)(b)(II) and 12-5.5-205(1)(b)(VII), C.R.S.

<sup>109</sup> § 12-5.5-205(1)(b)(XII), C.R.S.



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However, a violation of the abuse of health insurance law would not be relevant to either of the above grounds for discipline.

Most practice acts have abuse of health insurance in the grounds for discipline, including, but not limited to, dentistry, medical, and podiatry.<sup>110</sup>

However, the Director does not have authority in the Act to take action against audiologists or hearing aid providers who violate the abuse of health insurance provision. Since the General Assembly has included it in the grounds for discipline for most other healthcare practitioners, it should also include it in the grounds for discipline for audiologists and hearing aid providers.

Therefore, the General Assembly should include abuse of health insurance, as defined in section 18-13-119, C.R.S., in the grounds for discipline for audiologists and hearing aid providers.

***Recommendation 15 – Amend the grounds for discipline to include aiding and abetting a violation of the Act, rules, or an order of the Director.***

At this time, the Director does not have the authority to discipline an audiologist or a hearing aid provider for aiding and abetting a violation of the Act, rules, or an order of the Director.

This is a provision that is a standard in regulatory programs such as dentistry, medicine, and podiatry.<sup>111</sup> Unfortunately, regulatory history shows that there are people in every profession, occupation or business who take advantage of consumers.

While most audiologists and hearing aid providers do not take advantage of their customers, there are always the few who will. This provision is commonly included in the grounds for discipline for other regulatory programs because there are unscrupulous people in every occupation or profession who seek out loopholes in the law.

For this reason, the General Assembly should amend the grounds for discipline to include aiding and abetting a violation of the Act, rules, or an order of the Director.

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<sup>110</sup> §§ 12-35-129(1)(p), 12-36-117(1)(t), and 12-32-107(3)(r), C.R.S.

<sup>111</sup> §§ 12-35-129(1)(i), 12-36-117(1)(n), and 12-32-107(3)(k), C.R.S.

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***Recommendation 16 – Include in the grounds for discipline, failure to respond in an honest, materially responsive, and timely manner to a complaint letter sent by the Director.***

The Act is silent on whether the Director has the authority to formally discipline a license holder for failing to respond to a complaint.

When a complaint is filed against a license holder, the Director sends a letter outlining the nature of the complaint and requires the license holder to respond within 30 days. Although a response is required, no formal authority is delineated in the Act enabling the Director to discipline a license holder for failing to respond to a complaint within 30 days.

A response to a complaint letter is important because it could provide valuable information that may assist in determining whether a violation occurred. For example, the Director could receive a complaint alleging that an audiologist did not provide the generally accepted standard of care and punctured a patient's ear drum. However, the audiologist may respond with proof from an independent doctor verifying that the consumer's ear drum was intact and that the ear showed no signs of recent trauma.

Including such a provision would improve agency operations. Without a response, the Director may initiate a costly and unnecessary investigation only to find that the complaint has no merit. The same would be true of a response that is dishonest or that merely denies the complaint without any relevant or significant explanation.

By seeking a license as an audiologist or a hearing aid provider, an individual agrees to be governed by the regulatory authority and bound by its laws. A failure to respond to a complaint letter violates this agreement. Other practice acts, such as those regulating physicians and podiatrists, have similar provisions that authorize the boards to discipline a licensee who fails to respond fully and honestly to a complaint.<sup>112</sup>

Therefore, the General Assembly should include in the grounds for discipline failure to respond in an honest, materially responsive, and timely manner to a complaint issued by the Board.

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<sup>112</sup> §§ 12-36-117(1)(gg) and 12-32-107(3)(ff), C.R.S.

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**Recommendation 17 – Authorize the Director to designate a staff person to perform assigned powers and duties authorized in the Act.**

The Director has oversight of 13 director model programs in the Division. In order to effectively manage all of these programs and the Division which regulates 49 professions, occupations, and businesses, the Director must delegate some authority to staff.

By policy, the Director delegates specific statutory powers and duties to the director of the Health Services Section within the Division, and to the director of the Audiology and Hearing Aid Provider Licensure Program.<sup>113</sup>

The powers and duties that the Director delegates to staff include, but are not limited to:<sup>114</sup>

- Initiating complaints;
- Initiating investigations and inspections;
- Issuing subpoenas;
- Initiating actions to enforce subpoenas in District Court;
- Employing an administrative law judge to conduct hearings;
- Coordinating and conducting public rulemaking hearings; and
- With the approval of the Director, issuing letters of admonition, letters of concern, orders to cease and desist, injunctions, and stipulated final agency orders issued as a result of an initial decision by an administrative law judge.

This recommendation seeks to formalize this practice of delegation. A statutory provision would prevent any legal challenges to actions taken by the Director's designated staff, especially actions related to the Director's decision-making authority. At this time, the Director approves all final agency actions for Director-model programs. Allowing a designee to do so would create a more efficient process.

It is impractical to expect the Director to manage all 13 director-model programs in addition to the oversight of the entire Division without handing over some authority to staff. In order to avoid any unnecessary lawsuits, a statutory provision that authorizes the Director to delegate any powers and duties necessary to regulate audiologists and hearing aid providers should be included in the Act.

Therefore, the General Assembly should authorize the Director to designate a staff person to perform specific assigned powers and duties authorized in the Act.

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<sup>113</sup> Director's Policy 10-2. *Delegation of Authority*. Adopted January 2, 2009. Revised December 30, 2009.

<sup>114</sup> Director's Policy 10-2. *Delegation of Authority*. Adopted January 2, 2009. Revised December 30, 2009.

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***Administrative Recommendation 1 – Require hearing aid providers to disclose to consumers when and where to file a claim against a hearing aid provider’s surety bond.***

As a condition of licensure, hearing aid providers are required to maintain a surety bond. A surety bond guarantees some compensation for a consumer if a hearing aid provider fails to comply with the requirements of the Act. For example, if a hearing aid provider refuses to provide a refund within the statutorily mandated trial period, then a consumer may obtain payment from the surety company.

However, this requires the consumer to know about the existence of the surety bond. Only the hearing aid provider and the Director know the identity of the surety company that issued the bond.

In a typical scenario, the consumer files a complaint with the Director. Then, the Director determines whether the hearing aid provider failed to comply with the terms of the agreement. If the hearing aid provider continues to deny the consumer a refund when one is warranted, then the Director may inform the consumer that a surety bond is available. The Director is not required to do so.

According to the criteria in section 24-34-104, C.R.S., a sunset review should evaluate whether administrative or statutory changes are necessary to improve agency operations to enhance the public interest.

One solution would be for the Director to file a claim on behalf of the consumer. However, there is no statutory requirement for the Director to do so. Since the Director must already determine when a refund is due, it would not be difficult for the Director to take the extra step of filing a claim when a refund is not secured. This solution would be fair to all consumers. Otherwise, the law only benefits more sophisticated consumers who may have an easier time obtaining a payment from a surety company than others. However, this solution relies on the regulator to file the complaint, and if the regulator has more pressing duties, a claim may be unnecessarily delayed.

Another solution would be to require the Director to send a letter to the consumer when a refund is warranted. Since hearing aid providers are required, as a condition of licensure, to submit proof of a surety bond, the Director has contact information of any surety company that bonds a hearing aid provider licensed in Colorado. A form letter could easily be created by the Director to provide potential claimants the minimum information necessary to initiate the claims process. However, this solution also depends on the regulator, and for various reasons, the claim may be unnecessarily delayed.

The best solution would be to include a paragraph in the purchase agreement that informs a consumer when and where to file a claim. In this scenario, the consumer does not rely on the regulator to file a claim or to provide information. Additionally, in case a hearing aid provider changes surety companies, the Director should require hearing aid providers to disclose to consumers such information when requested.

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The Director, in section 12-5.5-206(4)(a), C.R.S., already has the authority to require any written disclosures necessary for consumer protection, and Recommendation 3 proposes providing the Director with the authority to discipline a hearing aid provider for violating a Director rule.

Therefore, the Director should require a disclosure to be included in the purchase agreement for the sale of a hearing aid that informs consumers when and where to file a claim against a hearing aid provider's surety bond, and to disclose to consumers any changes in such information when requested.