

Colorado Office of Policy, Research & Regulatory Reform

2019 Sunset Review

Licensing of Hearing Aid Providers





October 15, 2019

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 Colorado General Assembly established the sunset review process in 1976 as a way to analyze and evaluate regulatory programs and determine the least restrictive regulation consistent with the public interest. Since that time, Colorado's sunset process has gained national recognition and is routinely highlighted as a best practice as governments seek to streamline regulation and increase efficiencies.

Section 24-34-104(5)(a), Colorado Revised Statutes (C.R.S.), directs the Department of Regulatory Agencies to:

- Conduct an analysis of the performance of each division, board or agency or each function scheduled for termination; and
- 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 Colorado Office of Policy, Research and Regulatory Reform (COPRRR), located within my office, is responsible for fulfilling these statutory mandates. Accordingly, COPRRR has completed the evaluation of the licensing of hearing aid providers. I am pleased to submit this written report, which will be the basis for COPRRR's oral testimony before the 2020 legislative committee of reference.

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 Professions and Occupations in carrying out the intent of the statutes and makes recommendations for statutory changes in the event this regulatory program is continued by the General Assembly.

Sincerely,

Patty Salazar Executive Director





COLORADO

Department of Regulatory Agencies

Colorado Office of Policy, Research & Regulatory Reform

2019 Sunset Review

Licensing of Hearing Aid Providers

SUMMARY

What is regulated?

Hearing aid providers, also known as hearing aid specialists, select and fit hearing aids for people with hearing loss. In order to do this, they administer and interpret hearing tests, and they also take ear impressions and make ear molds for hearing aids.

Why is it regulated?

The primary reason Colorado regulates hearing aid providers is to protect consumers from financial harm in hearing aid sales. Consumers may be harmed by unscrupulous sales practices. For example, an individual may collect money for hearing aids and not provide the promised goods or services. An individual 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.

There is also some potential for harm related to the practice of fitting hearing aids. In order to fit a hearing aid, a hearing aid provider must test hearing, refer for medical conditions, determine whether a hearing aid is appropriate, and treat hearing loss with a medical device, so it is reasonable to expect some competency related to the practice of fitting and dispensing a hearing aid.

Who is regulated?

In fiscal year 17-18, the Director of the Division of Professions and Occupations (Director) licensed 164 hearing aid providers and 60 apprentices.

How is it regulated?

An individual must be licensed as a hearing aid provider in order to fit, dispense or deal in hearing aids or to represent himself or herself as a hearing aid provider or a hearing aid dispenser. There are three different routes to obtain a hearing aid provider license in Colorado: 1) a six-month apprenticeship with an audiologist or hearing aid provider and passage of the International Licensing Examination for Hearing Healthcare Providers (ILE), 2) passage of the National Competency Examination, or 3) an associate degree in hearing aid fitting and dispensing and passage of the ILE.

What does it cost?

In fiscal year 17-18, the total expenditures to oversee the program were \$29,431, and there were 0.25 full-time equivalent employees dedicated to the program.

What disciplinary activity is there?

In fiscal year 17-18, no hearing aid providers were disciplined by the Director.

KEY RECOMMENDATIONS

Continue the regulation of hearing aid providers for 11 years, until 2031.

The primary reason Colorado regulates hearing aid providers is to protect consumers from financial harm in hearing aid sales. Consumers may be harmed by unscrupulous sales practices. There is also some potential for harm related to the practice of fitting hearing aids. Therefore, the General Assembly should continue the licensure of hearing aid providers for 11 years, until 2031.

Combine the audiology licensing act with the hearing aid provider licensing act.

In order to create efficiencies in the regulation of audiologists and hearing aid providers, the General Assembly should combine the audiology licensing act with the hearing aid provider licensing act.

Restore the deceptive trade practices provisions related to hearing aid sales in section 6-1-701, C.R.S., to the Act.

Section 6-1-701, Colorado Revised Statutes (C.R.S.), of the Consumer Protection Act (CPA), defines deceptive trade practices related to hearing aid sales. It also contains specific language to be utilized in the hearing aid sales contract, and specifies the conditions for sales cancellation and refunds. The Colorado Attorney General (AG) and the state's district attorneys (DAs) are statutorily mandated with the enforcement of this section. However, it is more likely that consumers will file complaints with the licensing program, and the Director of the Division is better situated to take action related to violations of section 6-1-701, C.R.S. than the AG or the various DAs. For these reasons, the General Assembly should restore section 6-1-701, C.R.S., to the Act.

METHODOLOGY

As part of this review, Colorado Office of Policy, Research and Regulatory Reform staff interviewed stakeholders, officials with state and national professional associations, Division staff; and reviewed records, Colorado statutes and rules, and the laws of other states.

MAJOR CONTACTS MADE DURING THIS REVIEW

Colorado Division of Professions and Occupations
Colorado Office of the Attorney General
Colorado Hearing Society
Colorado Commission for the Deaf, Hard of Hearing and Deaf-Blind
Colorado Academy of Audiology
International Hearing Society

What is a Sunset Review?

A sunset review is a periodic assessment of state boards, programs, and functions to determine whether 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: Colorado Department of Regulatory Agencies Colorado Office of Policy, Research and Regulatory Reform 1560 Broadway, Suite 1550, Denver, CO 80202 www.dora.colorado.gov/opr



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Background

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 Colorado Office of Policy, Research and Regulatory Reform (COPRRR) within the Department of Regulatory Agencies (DORA) conducts a thorough evaluation of such programs based upon specific statutory criteria¹ 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:

- I. 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;
- II. 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;
- III. 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;
- IV. Whether an analysis of agency operations indicates that the agency performs its statutory duties efficiently and effectively;
- V. 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;
- VI. The economic impact of regulation and, if national economic information is not available, whether the agency stimulates or restricts competition;
- VII. 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;
- VIII. Whether the scope of practice of the regulated occupation contributes to the optimum utilization of personnel and whether entry requirements encourage affirmative action;

¹ Criteria may be found at § 24-34-104(6)(b), C.R.S.

- IX. Whether the agency through its licensing or certification process imposes any sanctions or disqualifications on applicants based on past criminal history and, if so, whether the sanctions or disqualifications serve public safety or commercial or consumer protection interests. To assist in considering this factor, the analysis prepared pursuant to subsection (5)(a) of this section must include data on the number of licenses or certifications that the agency denied based on the applicant's criminal history, the number of conditional licenses or certifications issued based upon the applicant's criminal history, and the number of licenses or certifications revoked or suspended based on an individual's criminal conduct. For each set of data, the analysis must include the criminal offenses that led to the sanction or disqualification; and
- X. Whether administrative and statutory changes are necessary to improve agency operations to enhance the public interest.

Sunset reports are organized so that a reader may consider these criteria while reading. While not all criteria are applicable to all sunset reviews, the various sections of a sunset report generally call attention to the relevant criteria. For example,

- In order to address the first criterion and determine whether a particular regulatory program is necessary to protect the public, it is necessary to understand the details of the profession or industry at issue. The Profile section of a sunset report typically describes the profession or industry at issue and addresses the current environment, which may include economic data, to aid in this analysis.
- To ascertain a second aspect of the first sunset criterion whether conditions that led to initial regulation have changed the History of Regulation section of a sunset report explores any relevant changes that have occurred over time in the regulatory environment. The remainder of the Legal Framework section addresses the third sunset criterion by summarizing the organic statute and rules of the program, as well as relevant federal, state and local laws to aid in the exploration of whether the program's operations are impeded or enhanced by existing statutes or rules.
- The Program Description section of a sunset report addresses several of the sunset criteria, including those inquiring whether the agency operates in the public interest and whether its operations are impeded or enhanced by existing statutes, rules, procedures and practices; whether the agency performs efficiently and effectively and whether the board, if applicable, represents the public interest.
- The Analysis and Recommendations section of a sunset report, while generally applying multiple criteria, is specifically designed in response to the tenth criterion, which asks whether administrative or statutory changes are necessary to improve agency operations to enhance the public interest.

These are but a few examples of how the various sections of a sunset report provide the information and, where appropriate, analysis required by the sunset criteria. Just as not all criteria are applicable to every sunset review, not all criteria are specifically highlighted as they are applied throughout a sunset review.

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.

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.

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 on COPRRR's website at: www.dora.colorado.gov/opr.

The functions of the Director of the Division of Professions and Occupations (Director and Division, respectively) as enumerated in Article 5.5 of Title 12, Colorado Revised Statutes (C.R.S.), shall terminate on September 1, 2020, unless continued by the General Assembly. During the year prior to this date, it is the duty of COPRRR to conduct an analysis and evaluation of the licensing of hearing aid providers pursuant to section 24-34-104, C.R.S.

The purpose of this review is to determine whether the currently prescribed regulation should be continued and to evaluate the performance of the Director. During this review, the Director must demonstrate that the program serves the public interest. COPRRR's findings and recommendations are submitted via this report to the Office of Legislative Legal Services.

² House Bill 19-1172 recodified this article and placed it in Article 230. In order to avoid confusion and erroneous citations and references, this sunset report consistently refers to the statutory provisions as they existed during the sunset review. A table of the citations as they have been recodified is located in Appendix B.

Methodology

As part of this review, COPRRR staff interviewed stakeholders, officials with state and national professional associations, Division staff; and reviewed records, Colorado statutes and rules, and the laws of other states.

Profile of the Profession

In a sunset review, COPRRR is guided by the sunset criteria located in section 24-34-104(6)(b), C.R.S. The first criterion asks 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.

In order to understand the need for regulation, it is first necessary to understand what the occupation does, where they work, who they serve and any necessary qualifications.

Approximately 48 million people in the United States suffer from some form of hearing loss, the majority of whom are older. About one third of people between the age of 65 and 74 experience some difficulty with hearing, and this increases to about half for those over the age of 75.³

Hearing loss can affect a person's ability to communicate, health, independence and quality of life.⁴ As baby boomers age, the need for specialists who can fit hearing aids is increasing.

Hearing aid providers, also known as hearing aid specialists, select and fit hearing aids for people with hearing loss. In order to do this, they administer and interpret hearing tests, and they also take ear impressions and make ear molds for hearing aids.⁵

Hearing aid providers may work in health-care organizations, such as a hospital or an audiologist's office, or they may work in retail stores.⁶

³ Consumer Reports. *Hearing Aid Buying Guide*: Sound Advice. Retrieved October 29, 2018, from https://www.consumerreports.org/cro/hearing-aids/buying-guide/index.htm

⁴ Dan G. Blazer, et al, *Hearing Health Care for Adults: Priorities for Improving Access and Affordability*, Committee on Accessible and Affordable Hearing Health Care for Adults, Board on Health Sciences Policy, Health and Medicine Division, National Academies of Sciences, Engineering, and Medicine, National Academies Press (2016), p. 1.

⁵ U.S. Bureau of Labor Statistics. *Occupational Outlook Handbook: Data for Occupations Not Covered in Detail*. Retrieved November 19, 2018, from https://www.bls.gov/ooh/about/data-for-occupations-not-covered-in-detail.htm

⁶ Study.com. *Hearing Aid Specialist: Education, Training and Certification*. Retrieved October 29, 2018, from https://study.com/articles/hearing_aid_specialist_education_training_certification.html

The sixth sunset criterion requires COPRRR to evaluate the economic impact of regulation. One way this may be accomplished is to review the expected salary of the profession and the projected growth in the profession.

In 2017, the median annual salary for hearing aid providers was \$54,860. The number of available jobs is expected to grow much faster than average for all occupations at approximately 20 percent between 2016 and 2026.⁷

There are two routes to becoming a hearing aid provider. An individual may complete on-the-job training, or an individual may obtain a degree in hearing instrument fitting and dispensing.⁸

A hearing aid provider may also obtain professional certification from the National Board for Certification in Hearing Instrument Sciences, but certification is not required to obtain employment. In order to be certified, a hearing aid provider must have a state license and two years of relevant work experience or a degree in hearing instrument fitting and dispensing and pass the certification examination.⁹

In evaluating the need for regulation, COPRRR also takes into consideration regulation in other states.

All states regulate hearing aid providers. The licensing requirements vary by state, but most states require candidates to pass a national written examination and some require passage of a practical examination.

⁷ U.S. Bureau of Labor Statistics. *Occupational Outlook Handbook: Data for Occupations Not Covered in Detail*. Retrieved November 19, 2018, from https://www.bls.gov/ooh/about/data-for-occupations-not-covered-in-detail.htm

⁸ U.S. News and World Report. *Hearing Aid Specialist*. Retrieved on November 19, 2018, from https://money.usnews.com/careers/best-jobs/hearing-aid-specialist

⁹ Study.com. *Hearing Aid Specialist: Education, Training and Certification*. Retrieved October 29, 2018, from https://study.com/articles/hearing_aid_specialist_education_training_certification.html

Legal Framework

History of Regulation

In a sunset review, the Colorado Office of Policy, Research and Regulatory Reform (COPRRR) is guided by the sunset criteria located in section 24-34-104(6)(b), Colorado Revised Statutes (C.R.S.). The first sunset criterion questions 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.

One way that COPRRR addresses this is by examining why the program was established and how it has evolved over time.

The Board of Hearing Aid Dealers (Board) was created in 1975 in the Division of Professions and Occupations (Division), as it is currently known, in the Department of Regulatory Agencies (DORA). A license was required for anyone who fit, dispensed or sold hearing aids, and 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, C.R.S., by adding deceptive trade practices specific to the sale of a hearing aid.

In 1994, a sunrise review revealed that consumers were being harmed by hearing aid providers, and the CPA alone provided inadequate protection. The most common consumer complaints related to:

- 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 providers. In the following year, the program was expanded to include the registration of hearing aid provider trainees.

Later, the laws regulating audiologists and hearing aid providers were strengthened. In 2000, the General Assembly expanded the authority of the Director of the Division (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 it 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.

However, in 2013, the legislature separated the regulation of hearing aid providers from the regulation of audiologists by creating two distinct sections of law, and it removed several important consumer protections, including:

- The requirement to obtain a license in order to sell a hearing aid;
- The section related to deceptive trade practices;
- The requirement for a surety bond;
- The grounds for discipline which included, "failure to practice according to commonly accepted professional standards"; and
- The authority for the Director to accept a disciplinary action in another state as *prima facie* evidence of misconduct if the basis for discipline would be grounds for discipline in Colorado.

The legislature also adopted several recommendations from a sunset review conducted in 2011, the most significant of which:

- Amended the qualifications required to obtain a license,
- Created an additional path to licensure for hearing aid providers,
- Authorized the Director to promulgate rules for licensure by endorsement, and
- Required anyone with a revoked or surrendered license to wait two years before applying for another license from the Director.

Legal Summary

The second and third sunset criteria question

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; and

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.

A summary of the current statutes and rules is necessary to understand whether regulation is set at the appropriate level and whether the current laws are impeding or enhancing the agency's ability to operate in the public interest.

During the 2019 legislative session, and as part of a larger effort to recodify portions of Title 12, C.R.S., the General Assembly passed, and the Governor signed, House Bill 1172. Effective October 1, 2019, this bill recodified the Act (section 12-5.5-101, et seq., C.R.S.) and moved it to Article 230. Notwithstanding this recodification, and to avoid confusion and erroneous citations and references, this sunset report consistently refers and cites to the Act as it existed during the sunset review. A table with the citations as they have been recodified may be found in Appendix B.

The Director is vested with the authority to administer and enforce the Act, which includes rulemaking authority.¹⁰

A hearing aid provider is defined in the Act as someone who is engaged in the practice of dispensing, fitting and dealing in hearing aids, 11 which includes: 12

- Selecting and adapting hearing aids for sale,
- Testing human hearing to sell hearing aids,
- Making impressions for ear molds, and
- Counseling hearing aid buyers.

The Act does not apply to audiologists or anyone licensed to work in the public schools. 13

The Act defines a hearing aid as a wearable device designed or offered to be customized for the purpose of compensating for impaired human hearing and includes any parts, attachments, accessories and ear molds. However, it does not include batteries or cords. Also, a surgically implanted device is not considered a hearing aid.¹⁴

The eighth sunset criterion questions whether the scope of practice of the regulated occupation contributes to the optimum utilization of personnel and whether entry requirements encourage affirmative action.

When considering this criterion, it is first necessary to examine the current scope of practice as it is defined in the Act.

The Act defines a scope of practice for hearing aid providers, which includes: 15

- Taking medical histories,
- Examining the ear,
- Testing hearing,

¹¹ § 12-5.5-101(7), C.R.S

¹² § 12-5.5-101(9), C.R.S

¹³ § 12-5.5-102(1), C.R.S.

¹⁴ § 12-5.5-101(6), C.R.S

¹⁰ § 12-5.5-301(4), C.R.S.

¹⁵ § 12-5.5-103(1), C.R.S

- Determining whether a hearing aid is appropriate,
- Selecting and fitting a hearing aid,
- Verifying a hearing aid's effectiveness,
- Taking ear impressions and preparing ear molds,
- Designing and modifying ear molds and hearing aids,
- Counseling on the use of hearing aids and communication strategies, and
- Supervising and training hearing aid providers entering the profession.

Only individuals who are licensed under the Act may dispense, fit or deal in hearing aids¹⁶ or use the titles "hearing aid provider" or "hearing aid dispenser,"¹⁷ except audiologists are not required to be licensed as hearing aid providers. ¹⁸

There are three different routes to obtain a hearing aid provider license in Colorado: 19

- 1. Complete a six-month apprenticeship with an audiologist or licensed hearing aid provider and pass the International Licensing Examination for Hearing Healthcare Providers (ILE) developed by the International Hearing Society, or
- 2. Pass the National Competency Examination offered by the National Board for Certification in Hearing Instrument Sciences, or
- 3. Obtain an associate degree in hearing aid fitting and dispensing and pass the ILE.

The Director must issue a license to any applicant who meets the requirements within 60 days of receiving a completed application.²⁰

An applicant may be licensed by endorsement if he or she has a license in good standing from another state, U.S. territory or foreign jurisdiction that required qualifications that are substantially similar to those of Colorado.²¹

An individual may obtain an apprentice license by submitting an application demonstrating that he or she is being trained under the direct supervision of a hearing aid provider with a license in good standing.²² An apprentice may not sell a hearing aid independently of the supervising hearing aid provider, and the supervisor is responsible for the care provided by the apprentice and is subject to discipline for failing to provide adequate supervision.²³ An apprentice license may be renewed.²⁴

¹⁶ § 12-5.5-201(1), C.R.S.

¹⁷ § 12-5.5-104, C.R.S

¹⁸ § 12-5.5-102(6), C.R.S.

^{19 3} CCR § 711-1 (1)(A), Hearing Aid Provider Rules.

²⁰ §§ 12-5.5-202(1)(a) and (b), C.R.S.

²¹ 3 CCR § 711-1(2)(A), Hearing Aid Provider Rules.

²² § 12-5.5-204(2), C.R.S.

²³ § 12-5.5-204(3), C.R.S.

²⁴ § 12-5.5-204(5), C.R.S.

According to program rules, in order to be eligible for a hearing aid provider license, an apprentice must complete the first six months of training under the direct supervision of a licensed hearing aid provider, which must cover at least 300 hours of documented on-site supervised training in:²⁵

- Taking a case history and review,
- Conducting ear examinations,
- Testing hearing,
- Testing speech,
- Interpreting tests and making medical referrals when appropriate,
- Taking ear impressions,
- Adjusting hearing aids,
- Verifying hearing aid performance, and
- Counseling and providing education on the use of hearing aids.

A business may hire unlicensed staff to assist in conducting business practices and dispensing hearing aids as long as unlicensed staff is supervised by a licensed hearing aid provider. However, an unlicensed staff person may not perform any of the tasks that are required to be covered in the 300 hours of training required during the apprenticeship, with the exception of counseling and providing education on the use of hearing aids. However, an unlicensed staff person may not perform any of the tasks that are required to be covered in the 300 hours of training required during the apprenticeship, with the exception of counseling and providing education on the use

A hearing aid provider must include his or her license number on all written contracts and receipts.²⁸

Each licensed hearing aid provider is required to develop a written plan to ensure the maintenance of customer records. Records must be maintained for a minimum of seven years, and must include:²⁹

- The customer's name;
- The goods or services provided, except for batteries, minor parts and accessories; and
- The date and price of each transaction.

The Director has the authority to conduct investigations and inspections regarding violations of the Act or the Director's rules.³⁰ The Director may issue subpoenas or may appoint an administrative law judge to take evidence and report his or her findings to the Director.³¹

²⁷ 3 CCR § 711-1(3)(A)(3), Hearing Aid Provider Rules.

²⁵ 3 CCR § 711-1(3)(B)(3), Hearing Aid Provider Rules.

²⁶ § 12-5.5-102(4), C.R.S.

²⁸ § 12-5.5-202(1)(c), C.R.S.

²⁹ § 12-5.5-206, C.R.S.

³⁰ § 12-5.5-301(1), C.R.S.

³¹ § 12-5.5-301(3), C.R.S.

The Director has the authority to deny, refuse to renew, revoke or suspend the license of anyone who engages in conduct that is grounds for discipline, ³² which includes: ³³

- Making a false or misleading statement or omission in an application;
- Violating the Act or a Director rule or order;
- Using false or misleading advertising;
- Offering anything of value to someone who advises another in a professional capacity as an inducement to influence the person or have the person influence others to purchase products sold by a licensed hearing aid provider or to refrain from dealing with competitors;
- Employing a device, scheme or artifice in order to defraud hearing aid buyers;
- Selling a hearing aid to anyone under the age of 18 without documentation that the child has been examined by a physician and an audiologist within six months of the fitting;
- Intentionally disposing of, concealing, diverting, converting or otherwise failing to account for any funds or assets of a hearing aid buyer;
- Making a false or misleading statement of fact concerning goods or services or the buyer's right to cancel with the intention or effect of deterring or preventing the buyer from exercising the buyer's right to cancel, or refusing to honor a buyer's request to cancel a contract for the purchase of a hearing aid if the request was made during the rescission period;
- Charging, collecting or recovering any cost or fee for any good or service that has been represented by the licensed hearing aid provider as free;
- Failing to adequately supervise an apprentice or an unlicensed employee;
- Employing anyone who violates the Act or the Director's rules or an order of the Director;
- Failing to comply with a final agency order, stipulation or agreement;
- Failing to respond in an honest, materially responsive and timely manner to a complaint lodged against the licensee;
- Being convicted of, pleading guilty or *nolo contendere* to, or receiving a deferred sentence for a felony or a crime involving fraud, deception, false pretense, theft, misrepresentation, false advertising or dishonest dealing;
- Selling, dispensing, adjusting, providing training or teaching in regard to, or otherwise servicing surgically implanted hearing devices unless the hearing aid provider is an audiologist or a physician; and
- Violating the CPA.

Additionally, it is also grounds for discipline for a licensed hearing aid provider to represent that someone licensed to practice medicine will be employed in the fitting or sale of a hearing aid when that is not true or that the service has been

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³² § 12-5.5-302(1)(d), C.R.S.

³³ § 12-5.5-401, C.R.S.

recommended by the state when that is not the case, or when it would be false or misleading.³⁴

If a hearing aid provider or an apprentice has his or her license revoked or surrenders his or her license to avoid discipline, he or she must wait two years to apply for a new license.³⁵

The Director also has the authority to place a licensee on probation, issue a letter of admonition or impose a fine of up to \$2,500 for each violation.³⁶

When the Director finds conduct that may not warrant formal action but if not corrected could lead to serious consequences, the Director may dismiss the complaint with a confidential letter of concern.³⁷

Finally, the Director may issue an order to cease and desist if he or she finds someone is practicing as a hearing aid provider without a license or is a threat to the health and safety of the public.³⁸ The Director may also seek an injunction through a court of competent jurisdiction against anyone violating the Act.³⁹

³⁴ § 12-5.5-401(1)(d), C.R.S.

³⁵ § 12-5.5-302(3), C.R.S.

³⁶ §§ 12-5.5-302(1)(a), (b) and (c), C.R.S.

³⁷ § 12-5.5-302(5), C.R.S.

³⁸ § 12-5.5-303(1), C.R.S.

³⁹ § 12-5.5-301(2), C.R.S.

Program Description and Administration

In a sunset review, the Colorado Office of Policy, Research and Regulatory Reform (COPRRR) is guided by sunset criteria located in section 24-34-104(6)(b), Colorado Revised Statutes (C.R.S.). The third, fourth and fifth sunset criteria question:

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; and

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.

In part, COPRRR utilizes this section of the report to evaluate the agency according to these criteria.

The Director of the Division of Professions and Occupations (Director and Division, respectively) within the Colorado Department of Regulatory Agencies is vested with the authority to regulate hearing aid providers.

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

Table 1
Program Fiscal Information

Fiscal Year	Total Program Expenditures	FTE
13-14	\$46,569	0.20
14-15	\$31,577	0.25
15-16	\$30,264	0.25
16-17	\$27,437	0.25
17-18	\$29,431	0.25

In fiscal year 13-14, the Audiology and Hearing Aid Provider Program was split into two separate programs. As a result, both programs underwent comprehensive rulemaking, which substantially increased legal services related to rulemaking. In the

following years, the minor fluctuations in expenditures were primarily due to legal fees.

In fiscal year 14-15, the FTE was increased slightly following an assessment of staff workload and the Division's organizational goals.

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.

In fiscal year 18-19, there were 0.25 FTE dedicated to the Program:

- Program Manager II (0.05 FTE), who is responsible for overall management, complaint resolution, stakeholder engagement and personnel management;
- Administrator III (0.05 FTE), who is responsible for practice monitoring and compliance;
- Technician IV (0.05 FTE), who is responsible for case management and correspondence including research, statutes and rules review, and case summary preparation;
- Technician III (0.05 FTE), who is responsible for complaint intake and correspondence; and
- Administrative Assistant III (0.05 FTE) who is responsible for case management and correspondence including research, statutes and rules review, and case summary preparation.

Table 2 shows the fees associated with regulation of hearing aid providers for the five-year period under review.

Table 2
Licensing Fees
Hearing Aid Providers

Fiscal Year	Original	Endorsement	Renewal	Reinstatement
13-14	\$476	\$476 \$360		\$375
14-15	\$476	\$476	n/a*	\$375
15-16	\$476	\$476	\$360	\$375
16-17	\$476	\$476	n/a*	\$375
17-18	\$476	\$476	\$460	\$475

*Not applicable

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

Table 3 shows the fees associated with regulation of apprentices for the five-year period under review.

Table 3
Licensing Fees
Apprentices

Fiscal Year	Original	Renewal	Reinstatement
13-14	n/a*	n/a*	n/a*
14-15	\$25	n/a	n/a
15-16	\$25	\$20	\$35
16-17	\$25	n/a	\$35
17-18	\$25	\$30	\$45

^{*}Not applicable

In fiscal year 13-14, the first year that apprentice licenses were issued, the Director converted the associate licenses, an obsolete license type, to apprentice licenses and did not charge any additional fees.

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

Licensing

The eighth sunset criterion questions whether the scope of practice of the regulated occupation contributes to the optimum utilization of personnel and whether entry requirements encourage affirmative action.

In part, COPRRR utilizes this section of the report to evaluate the program according to this criterion.

An individual must be licensed as a hearing aid provider in order to fit, dispense or deal in hearing aids or to represent himself or herself as a hearing aid provider or a hearing aid dispenser.

There are three different routes to obtain a hearing aid provider license in Colorado: 40

1. Complete a six-month apprenticeship with an audiologist or licensed hearing aid provider and pass the International Licensing Examination for Hearing Healthcare Providers (ILE) developed by the International Hearing Society, or

⁴⁰ 3 CCR § 711-1 (1)(A), Hearing Aid Provider Rules.

- 2. Pass the National Competency Examination offered by the National Board for Certification in Hearing Instrument Sciences, or
- 3. Obtain an associate degree in hearing aid fitting and dispensing and pass the ILE.

In order to obtain a license, an applicant must complete and submit an 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 4 shows the number of licenses issued to hearing aid providers over a five-year period.

Table 4
Hearing Aid Provider Licenses

Fiscal Year	Original	Endorsement	Renewal	Reinstatement	Active
13-14	11	3	105	1	116
14-15	7	14	n/a*	4	141
15-16	16	13	139	1	150
16-17	12	12	n/a	2	176
17-18	21	11	147	0	164

^{*}Not applicable

The number of actively licensed hearing aid providers increased by 41 percent over the five-year period. On average, about 13 hearing aid providers were issued an original license each year, and about 11 hearing aid providers were licensed by endorsement each year.

An individual must obtain an apprentice license in order to be trained as a hearing aid provider. To obtain an apprentice license, an applicant must submit verification of acceptance for training under the direct supervision of an audiologist or hearing aid provider whose license is in good standing.

Table 5 shows the number of licenses issued to apprentices over a five-year period.

Table 5
Apprentice Licenses

Fiscal Year	Original	Renewal Reinstatement		Active
13-14	14	n/a*	0	13
14-15	29	n/a 0		39
15-16	37	22	0	47
16-17	18	n/a	0	59
17-18	33	35	1	50

^{*}Not applicable

The Director began issuing apprentice licenses as of June 1, 2014, which is why the number of actively licensed apprentices was so low in fiscal year 13-14. However, the number of apprentice licenses nearly quadrupled over five years. Over the most recent three-year period, on average, there were 52 actively licensed apprentices.

Hearing aid provider and apprentice licenses expire on March 1 of even-numbered years.

Examinations

The eighth sunset criterion questions whether the scope of practice of the regulated occupation contributes to the optimum utilization of personnel and whether entry requirements encourage affirmative action.

In part, COPRRR utilizes this section of the report to evaluate the program according to this criterion.

In Colorado and most other states, a candidate must pass the ILE in order to be licensed as a hearing aid provider. ⁴¹ The ILE tests whether the candidates have obtained the knowledge and skills necessary to fit and dispense hearing aids.

The ILE is a computer-based, written examination that is developed by the International Hearing Society (IHS) in partnership with a psychometric services company, Alpine Testing Solutions. The examination is administered by IHS. The ILE consists of 105 multiple-choice questions, including 80 scored questions and 25 questions that are not scored. Examinees are allotted 120 minutes to complete the examination.

⁴¹ International Hearing Society. *Licensing Board Contacts for Hearing Healthcare Professionals*. Retrieved April 1, 2019, from https://www.ihsinfo.org/lhsV2/professional-development/pdf/2017/IHS%20Licensing%20Board%20Contacts.pdf

The ILE questions are based on the following subject areas:

- Applying infection control protocols (4 to 6 percent),
- Applying otoscopic inspection protocols (5 to 7 percent),
- Utilizing audiometric testing protocols (9 to 11 percent),
- Interpreting and explaining audiometric results (10 to 22 percent),
- Determining candidacy for amplification (7 to 9 percent),
- Determining a recommendation for amplification (8 to 10 percent),
- Selecting the style and type of a hearing instrument (10 to 12 percent),
- Selecting an earmold and other acoustic coupler (6 to 8 percent),
- Utilizing protocols to fit hearing instruments and other devices (10 to 12 percent),
- Verifying fitting (3 to 5 percent),
- Validating fitting (3 to 5 percent),
- Implementing aural rehabilitation and counseling (5 to 7 percent),
- Applying instrument maintenance and troubleshooting protocols (5 to 7 percent), and
- Interpreting electroacoustic analysis results (1 to 3 percent).

The ILE costs \$225 and it is offered at testing centers in:

- Boulder,
- Centennial,
- Colorado Springs,
- Denver.
- Fort Collins,
- Fort Morgan,
- Glenwood Springs,
- Grand Junction,
- La Junta,
- Lakewood,
- Longmont, and
- Pueblo.

Table 6 illustrates the number of ILE examinations taken nationally and the pass rates over a five-year period.

Table 6
ILE Examination Information
First-Time Test Takers

Calendar Year	Number of Examinations	Pass Rates
2014	1,140	62%
2015	1,263	63%
2016	1,253	58%
2017	1,431	56%
2018	1,292	62%

The pass rates are fairly low which may indicate that some examinees are not well prepared for the examination. There is no formal educational program for hearing aid providers in Colorado and most other states. Instead, hearing aid providers typically receive on-the-job training. While schools in a few states offer two-year degrees or certificate programs in hearing instrument sciences, Colorado does not have any academic programs for hearing aid providers.

Complaints & Disciplinary Activity

The seventh sunset criterion requires COPRRR to examine 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.

In part, COPRRR utilizes this section of the report to evaluate the program according to this criterion.

Anyone, including consumers, relatives of consumers, health-care providers and the Director, may file a complaint against a licensee or anyone who may have violated Article 5.5 of Title 12, C.R.S. (Act).

Operating under the authority delegated by the Director, staff reviews incoming complaints to determine any possible violations of the Act. If a possible violation is identified, 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 may 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 7 illustrates the number and types of complaints against all license types over a five-year period.

Table 7
Complaints

Type	FY 13-14	FY 14-15	FY 15-16	FY 16-17	FY 17-18
Practicing Without a License	0	1	0	0	0
Standard of Practice	1	0	2	0	0
Sexual Misconduct	0	0	0	1	0
Substance Abuse	0	0	0	0	0
Felony Conviction	0	0	0	0	0
Supervising Without Registration	0	0	1	0	0
Practicing Without Identifying as an Apprentice	0	0	0	1	0
Practicing Without a Supervisor	0	0	0	0	1
Total	1	1	3	2	1

Over a five-year period, few complaints were lodged against hearing aid providers. The leading cause for a complaint involved standard of practice, which is not grounds for discipline under the Act, followed closely by unlicensed practice complaints. Other non-jurisdictional complaints were not reported in this table.

The Director has the authority to deny, revoke, refuse to renew or suspend a license; place a licensee on probation; or issue a letter of admonition. The Director may also issue an order to cease and desist against anyone who is practicing as a hearing aid provider without a license.

When the Director determines that disciplinary action is appropriate, the Director may utilize the Expedited Settlement Process (ESP) within the Division to settle a disciplinary matter. The ESP process was established to resolve disciplinary issues without a formal hearing. When a case is referred to the ESP office, ESP staff obtains the parameters concerning the level of discipline that the Director determines is warranted and attempts to settle the case.

Over the five-year period under review, the ESP office resolved one case related to a hearing aid provider.

If the respondent does not agree to the terms offered through the ESP process, the Director may refer the case to the Attorney General's Office for formal proceedings against a hearing aid provider's license.

Table 8 illustrates the number and types of final actions taken by the Director against all license types during the five fiscal years indicated.

Table 8
Final Agency Actions

Туре	FY 13-14	FY 14-15	FY 15-16	FY 16-17	FY 17-18
Revocations	0	0	0	0	0
Suspensions	0	0	0	0	0
Stipulations	0	0	0	0	0
Letters of Admonition	0	0	0	0	0
Cease and Desist Order	0	0	1	0	0
Total Disciplinary Actions	0	0	1	0	0
Dismissals	0	1	2	0	3
Letters of Concern	1	0	0	2	0
Total Dismissals	1	1	2	2	3

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

Over a five-year period, the only disciplinary action taken against hearing aid providers was one cease and desist order related to unlicensed practice.

Fines

The Director has the authority to impose a fine of up to \$2,500 for each violation of the Act.⁴²

No fines were issued over the five-year period reviewed.

Collateral Consequences - Criminal Convictions

The ninth sunset criterion requires COPRRR to examine whether the agency under review, through its licensing processes, imposes any sanctions or disqualifications based on past criminal history, and if so, whether the disqualifications serve public safety or commercial or consumer protection interests.

In part, COPRRR utilizes this section of the report to evaluate the program according to this criterion.

⁴² §§ 12-5.5-302(1)(a), (b) and (c), C.R.S.

The Director has the authority to deny, suspend or revoke the license of a hearing aid provider who has been convicted of, plead guilty or *nolo contendere* to, or received a deferred sentence for a felony or a crime involving fraud, deception, false pretense, theft, misrepresentation, false advertising or dishonest dealing.

The Director did not disqualify or sanction any hearing aid provider licenses based on criminal history.

Analysis and Recommendations

The final sunset criterion questions whether administrative and statutory changes are necessary to improve agency operations to enhance the public interest. The recommendations that follow are offered in consideration of this criterion, in general, and any criteria specifically referenced in those recommendations.

Recommendation 1 - Continue the regulation of hearing aid providers for 11 years, until 2031.

The laws that govern hearing aid providers are located in Article 5.5 of Title 12, Colorado Revised Statutes (C.R.S.) (Act). The Director of the Division of Professions and Occupations (Director and Division, respectively) in the Department of Regulatory Agencies (DORA) is vested with the authority to enforce 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 primary reason Colorado regulates hearing aid providers is to protect consumers from financial harm in hearing aid sales.

Previous sunset reviews found that hearing aid providers may harm consumers with unscrupulous sales practices. For example, a hearing aid provider may collect money for hearing aids and not provide the promised goods or services. A 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. A 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. A 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.

Older people are especially vulnerable to unscrupulous sales practices, and hearing loss is one of the most common, chronic health conditions that affect older people. The National Institutes of Health estimates that one-quarter of people aged 65 to 74 and half of those over 75 suffer from disabling hearing loss.⁴³

While occupational regulation is not always the best response to deceptive trade practices, in 1994, 2006 and 2011, the Colorado Office of Policy, Research and Regulatory Reform (COPRRR) found the Consumer Protection Act (CPA) to be

⁴³ National Institutes of Health. *Quick Statistics About Hearing*. Retrieved July 18, 2019, from https://www.nidcd.nih.gov/health/statistics/quick-statistics-hearing

inadequate to protect hearing aid buyers, and occupational regulation does provide some important protections for consumers.

However, in 2013, several important consumer protections were removed from the Act, including:

- The requirement for a surety bond,
- The section related to deceptive trade practices,
- The requirement to be licensed in order to sell a hearing aid,
- The grounds for discipline which included, "failure to practice according to commonly accepted professional standards," and
- The authority for the Director to accept a disciplinary action in another state as *prima facie* evidence of misconduct and deny a license or take action against a Colorado licensee if the basis for discipline would be grounds for discipline in Colorado.

Without these protections, the Act creates an ineffective regulatory program.

Over the five-year period reviewed for this sunset report, there was very little complaint and disciplinary activity. The Director opened nine complaints against hearing aid providers and issued one cease and desist order.

Compare this to the activity reported in the 2011 sunset review when, over a five-year period, the Director opened 99 complaints against hearing aid providers and revoked four licenses, entered into six stipulated agreements, and issued 13 letters of admonition and nine orders to cease and desist.

The activity in this sunset review demonstrates a program that is either unnecessary or ineffective. Considering the complaint and disciplinary activity highlighted in the 2011 sunset review, however, the current low complaint and disciplinary activity is likely due to an ineffective regulatory program rather than an indication of little to no consumer harm.

The seventh sunset criterion questions 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.

At this time, the current regulatory program is self-serving to the profession rather than serving the public interest as regulatory programs are intended to be. Licensure provides a patina of respectability to an occupation or profession, but a licensing program with little to no consumer protections provides consumers with a false sense of security. Consumers reasonably expect that they will be protected when practitioners are licensed by the state.

That said, there is some potential for harm related to the practice of fitting hearing aids. In order to fit a hearing aid, a hearing aid provider must test hearing, refer for medical conditions, determine whether a hearing aid is appropriate and treat hearing loss with a medical device, so it is reasonable to expect some competency related to the practice of fitting and dispensing a hearing aid.

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

The Act, therefore, provides some public protection by ensuring that hearing aid providers are qualified to fit hearing aids.

Prior to introducing a bill requiring mandatory continuing education (MCE), section 24-34-901, C.R.S., requires information concerning the need for the requirement to be submitted to the Executive Director of DORA (Executive Director).

Upon receiving an MCE application, the Executive Director must:

- Conduct an analysis and evaluation of any proposal to impose mandatory continuing education on a given profession or occupation, and
- Present a written report to the General Assembly that addresses whether the proposed continuing education requirement would likely protect the public.

COPRRR, located within the Office of the Executive Director of DORA, is responsible for fulfilling this statutory mandate. During the sunset review, COPRRR received an application related to MCE for hearing aid providers, as required, and conducted an evaluation of the proposal to impose continuing education requirements on hearing aid providers.

After evaluating the proposal, COPRRR determined that the information in the MCE application did not demonstrate sufficient evidence that mandatory continuing education was necessary to protect the public health, safety and welfare.

Except for the qualifications required for a license, however, the current Act does little to protect consumers. Several recommendations in this report attempt to remedy this by restoring protections that were formerly in the Act. With these exceptions, few substantive issues were raised during the review.

Therefore, the General Assembly should continue the licensure of hearing aid providers for 11 years, until 2031.

Recommendation 2 - Combine the Act with the audiology licensing act.

In 2013, the General Assembly separated the regulation of audiologists from the regulation of hearing aid providers by creating two distinct licensing acts, one dedicated to licensing audiologists and another dedicated to licensing hearing aid providers.

It may be helpful to understand the reason for this separation. Following the last sunset review, the sunset bill to continue the regulation of audiologists and hearing aid providers did not pass due to an inability of the stakeholders to come to an agreement. The program subsequently went into wind up, and during the next legislative session, the stakeholders went their separate ways and two bills were passed, one regulating audiologists and another regulating hearing aid providers. This decision was not based on public policy or administrative reasons.

The third and fourth sunset criteria ask:

Whether the agency operates in the public interest and whether its operation is impeded or enhanced by existing statutes; and

Whether an analysis of agency operations indicates that the agency performs its statutory duties efficiently and effectively.

The regulation of audiologists and hearing aid providers would be more efficient if the two licensing acts were combined. This would benefit licensees in the long term by reducing the cost of administration, which could result in lower license fees.

While audiologists and hearing aid providers have different scopes of practice and different qualifications, they both fit and dispense hearing aids. In the past, audiologists and hearing aid providers were regulated under one program without any problems, and at least 13 other states regulate these license types under one program.

The two licensing programs currently share the same program director and the same legal counsel. However, combining the two licensing acts would allow the programs to be more fully integrated. The two license types could then share an operating budget and legal fees.

Moreover, the Division would only need to manage one licensing act. The parts in the separate licensing acts that are substantially similar could be combined, and the parts that are different could be maintained in separate parts of the new act. Doing this would create a more efficient rulemaking process for the two license types. When the rules are changed that relate to both license types, it would only require one stakeholder process and one rulemaking hearing. Rulemaking can consume a significant amount of administrative and legal resources, so combining the two acts would help to streamline the regulation of audiologists and hearing aid providers in the long term.

In order to create efficiencies in the regulation of audiologists and hearing aid providers, the General Assembly should combine Act with the audiology licensing act.

Recommendation 3 - Restore the deceptive trade practices provisions related to hearing aid sales in section 6-1-701, C.R.S., to the Act.

Section 6-1-701, C.R.S., of the CPA, is entitled, "Dispensing hearing aids - deceptive trade practices." This section defines deceptive trade practices related to hearing aid sales. It also contains specific language to be utilized in the hearing aid sales contract, and specifies the conditions for sales cancellation and refunds (see Appendix A). The Colorado Attorney General (AG) and the state's district attorneys (DAs) are statutorily mandated with the enforcement of this section.

In 2006, a sunset report found that AG and DA enforcement of this section of the CPA was minimal to nonexistent and recommended moving section 6-1-701, C.R.S., to the audiology and hearing aid provider licensing act in order to ensure that all complaints concerning hearing aid sales were filed with the Director.

However, in 2013, when the General Assembly divided the regulation of audiologists and hearing aid providers into two distinct licensing acts, it also removed this section of law from both acts. Consequently, the Director no longer has authority to take action related to this section of the CPA unless a court has already ruled that an individual has violated it.

The third sunset criterion asks whether the agency operates in the public interest and whether its operation is impeded or enhanced by existing statutes.

In 1994, 2006 and 2011, COPRRR found that AG and DA enforcement of the CPA was minimal to nonexistent and that this section of the CPA, in and of itself, was insufficient to protect hearing aid buyers. Consumers are unlikely to understand that they have recourse under the CPA, and if they do, hearing aid sales are a low priority for the AG or the various DAs. Consumers are unlikely to understand that they have recourse under the CPA, so they are unlikely to make use of it. Without a consumer complaint, this section is effectively useless.

It is more likely that consumers will file complaints with the licensing program, and the Director is better situated to take action related to violations of section 6-1-701, C.R.S.

For a time, Colorado sunset the regulation of hearing aid providers, and this section of the CPA was created in its place. In 1994, a sunrise review revealed that consumers were being harmed in hearing aid sales, and this section of the CPA alone was insufficient to protect them. The most common consumer complaints were related to:

• Refusal to provide a refund as required by the CPA,

- Problems with fittings and repairs, and
- Contract compliance and fraud issues.

Recall, previous sunset reviews also found that consumers may be harmed by unscrupulous sales practices or by the improper fitting of hearing aids. For example, an individual may collect money for hearing aids and not provide the promised goods or services. An individual 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 individual 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 individual 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.

As previously mentioned, older people are especially vulnerable to unscrupulous sales practices, and hearing loss is one of the most common, chronic health conditions that affect older people. The National Institutes of Health estimates that one-quarter of people aged 65 to 74 and half of those over 75 suffer from disabling hearing loss.⁴⁴

During the last sunset review, 30 complaints related to deceptive trade practices were filed against hearing aid providers. Since this section was removed from the licensing act, the regulatory activity in the hearing aid provider licensing program is almost nonexistent, leading some stakeholders to question why Colorado regulates hearing aid providers at all. This is a reasonable question.

Rather than repeating history and deregulating hearing aid providers, it would be better to create an effective regulatory program that provides the Director with the framework necessary to protect consumers.

Restoring these provisions to the Act will ensure that complaints related to hearing aid sales will be filed with the Director and will provide the Director with the authority to enforce this section of the law and help to create an effective regulatory structure.

This recommendation does not seek to remove these provisions from the CPA. If only a few consumers are harmed, the AG and the DAs will likely not take action based on these provisions, and the Director is better positioned to act. However, if one hearing aid provider or business harms numerous people, the CPA will afford better protect than the Act since the AG or a DA could assess triple damages and the Director does not have any authority to make consumers whole.

Therefore, the General Assembly should restore section 6-1-701, C.R.S., to the Act.

⁴⁴ National Institutes of Health. *Quick Statistics About Hearing*. Retrieved July 18, 2019, from https://www.nidcd.nih.gov/health/statistics/quick-statistics-hearing

Recommendation 4 - Clarify that a license is required to sell a hearing aid.

Previously a hearing aid provider was required to be licensed prior to "selling or negotiating to sell, directly or indirectly, any hearing aid for the hearing impaired."

Currently, a hearing aid provider is required to be licensed prior to "engaging in the practice of dispensing, fitting or dealing in hearing aids," ⁴⁵ which at first seems reasonable. However, the practice of dispensing, fitting or dealing in hearing aids is defined as:⁴⁶

- Selecting and adapting hearing aids for sale;
- Testing human hearing for purposes of selecting and adapting hearing aids for sale; and
- Making impressions for ear molds and counseling and instructing prospective users for purposes of selecting, fitting, adapting or selling hearing aids.

This definition leaves out one important element: selling a hearing aid.

The third sunset criteria questions whether the agency operates in the public interest and whether its operation is impeded or enhanced by existing statutes.

Several sunrise and sunset reviews have determined that while there is some evidence of consumer harm related to the practice of fitting and servicing a hearing aid, the primary reason to regulate hearing aid providers is to protect consumers from financial harm, such as failure to provide products or services, failure to provide a statutorily required refund, engaging in fraud and failure to comply with a the terms of a contract.

Clearly defining that a license is required in order to sell a hearing aid is necessary for public protection. Otherwise, the Director may not have the authority she needs to regulate hearing aid providers.

Recall, previous sunset reviews also found that consumers may be harmed by unscrupulous sales practices or by the improper fitting of hearing aids. For example, an individual may collect money for hearing aids and not provide the promised goods or services. An individual 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 individual 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 individual 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.

⁴⁵ § 12-5.5-201(1), C.R.S.

⁴⁶ § 12-5.5-101(9), C.R.S.

As previously mentioned, older people are especially vulnerable to unscrupulous sales practices, and hearing loss is one of the most common, chronic health conditions that affect older people. The National Institutes of Health estimates that one-quarter of people aged 65 to 74 and half of those over 75 suffer from disabling hearing loss.⁴⁷

During the last sunset review, 30 complaints related to deceptive trade practices were filed against hearing aid providers. Since this section was removed from the licensing act, the regulatory activity in the hearing aid provider licensing program is almost nonexistent.

Clarifying that a license is required in order to sell a hearing aid will ensure that complaints related to hearing aid sales will be filed with the Director and will provide the Director with the authority to enforce this section of the law and help to create an effective regulatory structure.

In order to better protect consumers, the General Assembly should clearly require a license in order to sell or negotiate to sell, directly or indirectly, any hearing aid for the hearing impaired.

Recommendation 5 - Clarify that an individual without a license may not represent themselves as a hearing aid provider by using other similar terms.

Currently, the Act protects two titles: "hearing aid provider" and "hearing aid dispenser." However, other titles may be used to indicate an individual may practice as a hearing aid provider. In fact, other states use a variety of titles, such as, "hearing instrument specialist" or "hearing aid dealer," and many hearing aid providers in Colorado represent themselves as hearing instrument specialists or hearing aid specialists.

The third sunset criterion questions whether the agency operates in the public interest and whether its operation is impeded or enhanced by existing statutes.

A clear law makes for better enforcement of the Act. It would be better to clarify that other titles that imply an individual may dispense, fit or deal in hearing aids are also protected.

For this reason, the General Assembly should clarify other titles that imply that an individual is qualified to practice as a hearing aid provider are also protected.

⁴⁷ National Institutes of Health. *Quick Statistics About Hearing*. Retrieved July 18, 2019, from https://www.nidcd.nih.gov/health/statistics/quick-statistics-hearing

Recommendation 6 - Strike language in section 12-5.5-102(4)(b), C.R.S.

Section 12-5.5-102(4)(b), C.R.S., states that "nothing in this article prohibits a business or licensee from performing tasks that would be permissible if the licensee was not licensed."

The third sunset criterion questions whether the agency operates in the public interest and whether its operation is impeded or enhanced by existing statutes.

This provision is nonsensical and unnecessary. This language was apparently included in the Act to address an issue related to a hearing aid provider who was programming cochlear implants, which the Act specifically prohibited. This is still prohibited under Colorado law and including this language in the Act does nothing to change this.

A clear law makes for better enforcement of the Act. Rather than clutter up the Act with language that seems to be meaningful but is not, it would be better to remove it altogether.

The General Assembly should, therefore, strike the language in section 12-5.5-102(4)(b), C.R.S.

Recommendation 7 - Require hearing aid providers to maintain a surety bond.

The primary reason to regulate hearing aid providers is to protect consumers from financial harm. While occupational regulation is often not the best response to deceptive trade practices, the CPA on its own has been found to be inadequate to protect hearing aid buyers, and occupational regulation does provide some important protections for consumers.

Prior to 2013, hearing aid providers were required to maintain a \$10,000 surety bond. Surety bonds are typically required when it is fairly easy to enter into a profession and the harm is primarily financial, as is the case with hearing aid providers.

Audiologists, on the other hand, must obtain a doctorate in order to practice, and they are required to maintain professional liability insurance, a requirement that hearing aid providers do not have.

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.

The third sunset criteria questions whether the agency operates in the public interest and whether its operation is impeded or enhanced by existing statutes.

During the last sunset review, there were 30 complaints against hearing aid providers for failing to provide refunds within the statutorily mandated period or deceptive trade practices. For example, one licensee was cold calling individuals at home and promising hearing aids that could help them hear even when they had a medical condition that prevented them from benefiting from hearing aids. When these consumers realized the hearing aids did not work as promised, they requested refunds. The hearing aid provider was having cash flow problems and was unable to provide the refunds. In this case, the surety bond was in place and the consumers were able to file claims against the bond.

As previously mentioned, older people are especially vulnerable to unscrupulous sales practices, and hearing loss is one of the most common, chronic health conditions that affect older people. The National Institutes of Health estimates that one-quarter of people aged 65 to 74 and half of those over 75 suffer from disabling hearing loss.⁴⁸

Without the surety bond, consumers like these may never obtain any compensation.

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. For anyone who has difficulty obtaining a surety bond or does not want one, a cash deposit or a certificate of deposit with the state could be authorized in lieu of a surety bond.

In order to create an effective regulatory program, the General Assembly should restore the requirement for hearing aid providers to maintain a surety bond in the amount of \$10,000, authorize the Director to file a claim, or assist a consumer in filing a claim, and require the Director to determine the requirements for a surety bond and an alternative or alternatives for a surety bond, such as a cash deposit or a certificate of deposit.

Recommendation 8 - Add to the grounds for discipline, "failure to practice according to commonly accepted professional standards."

Hearing aid providers are practicing hearing aid fitting, in which they must test hearing, refer for medical conditions and treat hearing loss with a medical device, so it is reasonable to expect some competency related to the practice of fitting a hearing aid.

⁴⁸ National Institutes of Health. *Quick Statistics About Hearing*. Retrieved July 18, 2019, from https://www.nidcd.nih.gov/health/statistics/quick-statistics-hearing

While the scope of practice is narrow, there is some limited potential for harm related to the practice of fitting a hearing aid. Hearing aid providers may physically damage an ear when making an ear mold. An individual may suffer permanent hearing loss if a hearing aid provider does not refer for a medically treatable condition, such as sudden hearing loss in one ear, and a hearing aid provider may exacerbate hearing loss if a hearing aid is over amplified.

The grounds for discipline previously included failing to practice within the commonly accepted professional standards. However, in 2013, this was removed from the licensing act.

During the last sunset review, the Director received 19 complaints related to hearing aid providers failing to practice according to commonly accepted professional standards. Today, the Director must dismiss a complaint related to standard of practice.

Failure to practice according to commonly professional standards is typically grounds for discipline in occupational and professional regulation, and it is highly unusual for it not to be included in a practice act.

COPRRR reviewed the laws of 25 other states and found that most of these states provide the regulator with the authority to take action against a hearing aid provider's license for failing to meet the commonly accepted professional standards.

Hearing aid providers are required to be trained in testing hearing and fitting hearing aids and they are required to pass an examination related to these practices, so there must be some minimum standards of practice. Otherwise, hearing aid providers would not need to demonstrate competency through an examination.

The third sunset criterion questions whether the agency operates in the public interest and whether its operation is impeded or enhanced by existing statutes.

Professional standards form the backbone of occupational regulation. Ensuring practitioners meet the standards related to a particular practice is important for public protection. Otherwise, incompetent or negligent practitioners cannot be removed from practice.

Therefore, the General Assembly should restore to the grounds for discipline, "failure to practice according to commonly accepted professional standards."

Recommendation 9 - Authorize the Director to accept a disciplinary action in another state as *prima facie* evidence of misconduct if the basis for the action would be grounds for discipline in Colorado.

Previously, the Director had the authority to accept a suspension, revocation or other disciplinary action in another state as *prima facie* evidence of misconduct if the basis for the action would be grounds for discipline in Colorado.

This authority is necessary for public protection. If a hearing aid provider engages in conduct serious enough to have his or her license revoked in another state, the director should be able to consider the conduct and either deny a license or take action against the license here in Colorado.

Consider a hearing aid provider who has had his license revoked in another state for defrauding hearing aid buyers. It would not be in the interest of public protection to allow this individual to be licensed in Colorado.

The third sunset criteria questions whether the agency operates in the public interest and whether its operation is impeded or enhanced by existing statutes.

COPRRR staff reviewed the laws of other states and found that many of them have a provision allowing the regulator to accept a suspension, revocation or other disciplinary action in another state as *prima facie* evidence of misconduct. Without such a provision in Colorado, our state may be a destination for those who cannot get licensed anywhere else.

The Director is provided this authority in the audiology licensing act, ⁴⁹ and while hearing aid providers have a narrower scope of practice, they perform many of the same tasks as audiologists.

This provision is typical in occupational and professional regulation because it is necessary to protect the public against unsafe practitioners. In order to create an effective regulatory program that provides adequate protections for Colorado consumers, this provision should be returned to the Act.

Therefore, the General Assembly should authorize the Director to accept a disciplinary action in another state, local jurisdiction or the federal government as *prima facie* evidence of misconduct and deny a license or take action against a Colorado licensee if the basis for discipline would be grounds for discipline in Colorado.

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⁴⁹ § 12-29.9-108(6), C.R.S.

Recommendation 10 - Require final agency actions to be appealed to the Court of Appeals.

Currently, the Act is silent on where final agency actions may be appealed. In these circumstances, a case may be appealed to the District Court and once an appeal has been decided by the District Court, it may then be further appealed to the Court of Appeals.

The third and fourth sunset criteria ask:

Whether the agency operates in the public interest and whether its operation is impeded or enhanced by existing statutes; and

Whether an analysis of agency operations indicates that the agency performs its statutory duties efficiently and effectively.

It would be more efficient and consistent with other practice acts for the appeals to be made directly to the Court of Appeals. This saves time by putting the appeal in the court that is most familiar with administrative law, and it allows the District Court to devote more of its time to its over-burdened docket.

For these reasons, the General Assembly should require disciplinary actions to be appealed directly to the Court of Appeals.

Recommendation 11 - Repeal references to the National Competency Examination and the National Board for Certification in Hearing Instrument Sciences.

Currently, there are three different routes to obtain a hearing aid provider license in Colorado: 50

- Complete a six-month apprenticeship with an audiologist or licensed hearing aid provider and pass an entry-level examination, as determined by the Director, or
- 2. Pass the National Competency Examination offered by the National Board for Certification in Hearing Instrument Sciences (NBC-HIS), or
- 3. Obtain an associate degree in hearing aid fitting and dispensing and pass the entry-level examination, as determined by the Director.

In the second option, the Act specifically names the certifying body that develops and administers the examination.⁵¹

⁵⁰ 3 CCR § 711-1 (1)(A), Hearing Aid Provider Rules.

⁵¹ § 12-5.5-201(3)(a), C.R.S.

Naming specific organizations in statute can be problematic. Organizations may change their names, they may merge with other organizations or they may cease operations entirely. Additionally, these organizations are not subject to the state's rulemaking or transparency requirements. Thus, private organizations can establish state certification standards with very little public input, transparency or state participation.

In this case, the Director has the authority to determine that this examination is not appropriate, but it does not provide the Director the authority to select another certifying body that also offers an acceptable examination.

The better practice would be to authorize the regulator, in this case the Director, to adopt the appropriate examination by rule. As a practical matter, very little is likely to change since NBC-HIS is the only certifying body that offers an examination for hearing aid providers. However, repealing the references to NBC-HIS would provide the Director with greater flexibility in the event that other examinations are developed in the future.

The second sunset criterion asks whether the existing statutes and regulations establish the least restrictive from of regulation consistent with the public interest. Naming specific organizations in statute limits the Director's authority and flexibility, which is contrary to the goal to protect the public interest.

Therefore, the General Assembly should repeal the statutory references to the National Competency Examination and the NBC-HIS.

Appendix A - Section 6-1-701, C.R.S.

Recommendation 3 of this report proposes restoring the deceptive trade practices provisions related to the sale of hearing aids in section 6-1-701, Colorado Revised Statutes (C.R.S.) to Article 5.5 of Title 12, C.R.S. The language of this section is provided here.

Section 6-1-701. Dispensing Hearing Aids - Deceptive Trade Practices - Definitions

- (1) As used in this section, unless the context otherwise requires:
 - (a) "Dispense", with regard to a hearing aid, means to sell or transfer title, possession, or the right to use by lease, bailment, or any other method. The term does not apply to wholesale transactions with distributors or dealers.
 - (b) "Dispenser" means a person who dispenses hearing aids.
 - (c) (I) "Hearing aid" means any wearable instrument or device designed or offered to aid or compensate for impaired human hearing and includes:
 - (A) Any parts, attachments, or accessories to the instrument or device, as defined in rules adopted by the director of the division of professions and occupations in the department of regulatory agencies; and
 - (B) Ear molds, excluding batteries and cords.
 - (II) "Hearing aid" does not include a surgically implanted hearing device.
 - (d) "Practice of dispensing, fitting, or dealing in hearing aids" includes:
 - (I) Selecting and adapting hearing aids for sale;
 - (II) Testing human hearing for purposes of selecting and adapting hearing aids for sale; and
 - (III) Making impressions for ear molds and counseling and instructing prospective users for purposes of selecting, fitting, adapting, or selling hearing aids.
 - (e) "Surgically implanted hearing device" means a device that is designed to produce useful hearing sensations to a person with a hearing impairment and that has, as one or more components, a unit that is surgically implanted into the ear, skull, or other interior part of the body. The term includes any associated unit that may be worn on the body.

- (2) In addition to any other deceptive trade practices under section 6-1-105, a dispenser engages in a deceptive trade practice when the dispenser:
 - (a) Fails to deliver to each person to whom the dispenser dispenses a hearing aid a receipt that:
 - (I) Bears the business address of the dispenser together with specifications as to the make and serial number of the hearing aid furnished and the full terms of the sale clearly stated. If the dispenser dispenses a hearing aid that is not new, the dispenser shall clearly mark on the hearing aid container and the receipt the term "used" or "reconditioned", whichever is applicable, within the terms of the guarantee, if any.
 - (II) Bears, in no smaller type than the largest used in the body of the receipt, in substance, a provision that the buyer has been advised at the outset of the buyer's relationship with the dispenser that any examination or representation made by a dispenser in connection with the practice of dispensing, fitting, or dealing in hearing aids is not an examination, diagnosis, or prescription by a person licensed to practice medicine in this state and, therefore, must not be regarded as medical opinion or advice;
 - (III) Bears, in no smaller type than the largest used in the body of the receipt, a provision indicating that dispensers who are licensed, certified, or registered by the department of regulatory agencies are regulated by the division of professions and occupations in the department of regulatory agencies;
 - (IV) Bears a provision labeled "warranty" in which the exact warranty terms and periods available from the manufacturer are documented, or includes an original or photocopy of the original manufacturer's warranty with the receipt;
 - (b) Dispenses 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;

(c)

(I) Fails to receive from a licensed physician, before dispensing, fitting, or selling a hearing aid to any person, a written prescription or recommendation, issued within the previous six months, that specifies that the person is a candidate for a hearing aid; except that any person eighteen years of age or older who objects to

- medical evaluation on the basis of religious or personal beliefs may waive the requirement by delivering to the dispenser a written waiver;
- (II) Dispenses, adjusts, provides training or teaching in regard to, or otherwise services surgically implanted hearing devices unless the dispenser is an audiologist or physician;
- (d) Fails to recommend in writing, prior to fitting or dispensing a hearing aid, that the best interests of the prospective user would be served by consulting a licensed physician specializing in diseases of the ear, or any licensed physician, if any of the following conditions exist:
 - (I) Visible congenital or traumatic deformity of the ear;
 - (II) Active drainage of the ear, or a history of drainage of the ear within the previous ninety days;
 - (III) History of sudden or rapidly progressive hearing loss;
 - (IV) Acute or chronic dizziness;
 - (V) Unilateral hearing loss of sudden onset within the previous ninety days;
 - (VI) Audiometric air-bone gap equal to or greater than fifteen decibels at 500 hertz (Hz), 1,000 Hz, and 2,000 Hz;
 - (VII) Visible evidence of significant cerumen accumulation on, or a foreign body in, the ear canal;
 - (VIII) Pain or discomfort in the ear;
- (e) Fails to provide a minimum thirty-day rescission period with the following terms:
 - (I) The buyer has the right to cancel the purchase for any reason before the expiration of the rescission period by giving or mailing written notice of cancellation to the dispenser and presenting the hearing aid to the dispenser, unless the hearing aid has been lost or significantly damaged beyond repair while in the buyer's possession and control. The rescission period is tolled for any period during which a dispenser takes possession or control of a hearing aid after its original delivery.

(II) The buyer, upon cancellation, is entitled to receive a full refund of any payment made for the hearing aid within thirty days after returning the hearing aid to the dispenser, unless the hearing aid was significantly damaged beyond repair while the hearing aid was in the buyer's possession and control;

(III)

(A) The dispenser shall provide a written receipt or contract to the buyer that includes, in immediate proximity to the space reserved for the signature of the buyer, the following specific statement in all capital letters of no less than ten-point, boldfaced type:

THE BUYER HAS THE RIGHT TO CANCEL THIS PURCHASE FOR ANY REASON AT ANY TIME PRIOR TO 12 MIDNIGHT ON THE [insert applicable rescission period, which must be no shorter than thirty days after receipt of the hearing aid] CALENDAR DAY AFTER RECEIPT OF THE HEARING AID BY GIVING OR MAILING THE DISPENSER 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.

- (B) The written contract or receipt provided to the buyer must also contain a statement, in print size no smaller than ten-point type, that the sale is void and unenforceable if the hearing aid being purchased is not delivered to the consumer within thirty days after the date the written contract is signed or the receipt is issued, whichever occurs later. The written contract or receipt must also include the dispenser's license, certification, or registration number, if the dispenser is required to be licensed, certified or registered by the state, and a statement that the dispenser will promptly refund all moneys paid for the purchase of a hearing aid if it is not delivered to the consumer within the thirty-day period. The buyer cannot waive this requirement, and any attempt to waive it is void.
- (IV) A refund request form must be attached to each receipt and must contain the information in subparagraph (I) of paragraph (a) of this subsection (2) and the statement, in all capital letters of no less than ten-point, bold-faced type: "Refund request this form must be postmarked by ------ (Date to be filled in). No refund will be given until the hearing aid or hearing aids are returned to the dispenser." A space for the buyer's address, telephone number, and signature

must be provided. The buyer is required only to sign, list the buyer's current address and telephone number, and mail the refund request form to the dispenser. If the hearing aid is sold in the buyer's home, the buyer may require the dispenser to arrange the return of the hearing aid.

- (f) Represents that the service or advice of a person licensed to practice medicine will be used or made available in the selection, fitting, adjustment, maintenance, or repair of hearing aids when that is not true or using the terms "doctor", "clinic", "state-licensed clinic", "state-registered", "state-certified", or "state-approved" or any other term, abbreviation, or symbol when it would:
 - (I) Falsely give the impression that service is being provided by persons trained in medicine or that the dispenser's service has been recommended by the state when that is not the case; or
 - (II) Be false or misleading;
- (g) Directly or indirectly:
 - (I) Gives or offers to give, or permits or causes to be given, money or anything of value to any person who advises another in a professional capacity as an inducement to influence the person or have the person influence others to purchase or contract to purchase products sold or offered for sale by the dispenser; except that a dispenser does not violate this subparagraph (I) if the dispenser pays an independent advertising or marketing agent compensation for advertising or marketing services the agent rendered on the dispenser's behalf, including compensation that is paid for the results or performance of the services on a perpatient basis; or
 - (II) Influences or attempts to influence any person to refrain from dealing in the products of competitors;
- (h) Dispenses a hearing aid to a person who has not been given tests utilizing appropriate established procedures and instrumentation in the fitting of hearing aids, except when selling a replacement hearing aid within one year after the date of the original purchase;
- (i) Makes a false or misleading statement of fact concerning goods or services or the buyer's right to cancel with the intention or effect of deterring or preventing the buyer from exercising the buyer's right to cancel, or refuses to honor a buyer's request to cancel a contract for the purchase of a

- hearing aid, if the request was made during the rescission period set forth in paragraph (e) of this subsection (2);
- (j) Employs a device, a scheme, or artifice with the intent to defraud a buyer of a hearing aid;
- (k) Intentionally disposes of, conceals, diverts, converts, or otherwise fails to account for any funds or assets of a buyer of a hearing aid that is under the dispenser's control; or
- (l) Charges, collects, or recovers any cost or fee for any good or service that has been represented by the dispenser as free.
- (3) (a) This section applies to a dispenser who dispenses hearing aids in this state.
 - (b) This section does not apply to the dispensing of hearing aids outside of this state so long as the transaction either conforms to this section or to the applicable laws and rules of the jurisdiction in which the transaction takes place.

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Appendix B - Title 12 Recodification Table

This table shows provisions of Article 5.5 of Title 12 of the Colorado Revised Statutes that were relocated as a result of the passage of House Bill 19-1172, concerning an organizational recodification of Title 12.

Prior to October 1, 2019	October 1, 2019 and Thereafter	Prior to October 1, 2019	October 1, 2019 and Thereafter
12-5.5-101 IP	12-230-102 IP	12-5.5-204(1)	12-230-204(1)
12-5.5-101(1)	Repealed	12-5.5-204(2)	12-230-204(2)
12-5.5-101(2)	12-230-102(1)	12-5.5-204 IP(3)	12-230-204 IP(3)
12-5.5-101(3)	Repealed	12-5.5-204(3)(a)	12-230-204(3)(a)
12-5.5-101(4)	12-230-102(2)	12-5.5-204(3)(b)	12-230-204(3)(b)
12-5.5-101(5)	Repealed	12-5.5-204 IP(4)	12-230-204 IP(4)
12-5.5-101 IP(6)(a)	12-230-102 IP(3)(a)	12-5.5-204(4)(a)	12-230-204(4)(a)
12-5.5-101(6)(a)(l)	12-230-102(3)(a)(l)	12-5.5-204(4)(b)	12-230-204(4)(b)
12-5.5-101(6)(a)(ll)	12-230-102(3)(a)(II)	12-5.5-204(5)	12-230-204(5)
12-5.5-101(6)(b)	12-230-102(3)(b)	12-5.5-204(6)	Repealed
12-5.5-101(7)	12-230-102(4)	12-5.5-204(7)	12-230-204(6)
12-5.5-101(8)	Repealed	12-5.5-205	Repealed
12-5.5-101 IP(9)	12-230-102 IP(5)	12-5.5-206	12-230-205
12-5.5-101(9)(a)	12-230-102(5)(a)	12-5.5-301	12-230-301
12-5.5-101(9)(b)	12-230-102(5)(b)	12-5.5-301(1)	12-230-301(1)
12-5.5-101(9)(c)	12-230-102(5)(c)	12-5.5-301(2)	12-230-301(2)
12-5.5-101(10)	12-230-102(6)	12-5.5-301(3)	Repealed
12-5.5-102	12-230-103	12-5.5-301(4)	12-230-301(3)
12-5.5-102 IP(1)	12-230-103 IP(1)	12-5.5-302	12-20-404
12-5.5-102(1)(a)	12-230-103(1)(a)	12-5.5-302	12-230-302
12-5.5-102(1)(b)	12-230-103(1)(b)	12-5.5-302 IP(1)	12-20-404 IP(1)
12-5.5-102(2)	12-230-103(2)	12-5.5-302(1)(a)	12-20-404(1)(a)
12-5.5-102(3)	12-230-103(3)	12-5.5-302(1)(b)	12-20-404(1)(b)(l)
12-5.5-102 IP(4)	12-230-103 IP(4)	12-5.5-302(1)(c)	12-20-404(1)(c)(l)
12-5.5-102(4)(a)	12-230-103(4)(a)	12-5.5-302(1)(d)	12-20-404(1)(d)(l)
12-5.5-102(4)(b)	12-230-103(4)(b)	12-5.5-302(2)	12-20-404(2)(a)
12-5.5-102(5)	12-230-103(5)	12-5.5-302(3)	12-20-404(3)(a)(l)
12-5.5-102(6)	12-230-103(6)	12-5.5-302(4)(a)	12-20-404(4)(a)
12-5.5-103	12-230-104	12-5.5-302(4)(b)(l)	12-20-404(4)(b)(l)
12-5.5-103 IP(1)	12-230-104 IP(1)	12-5.5-302(4)(b)(II)	12-20-404(4)(b)(II)
12-5.5-103(1)(a)	12-230-104(1)(a)	12-5.5-302(5)	12-20-404(5)(a)
12-5.5-103(1)(b)	12-230-104(1)(b)	12-5.5-302(7)	12-20-404(6)(a)
12-5.5-103(1)(c)	12-230-104(1)(c)	12-20-405	12-5.5-303
12-5.5-103(1)(d)	12-230-104(1)(d)	12-5.5-303	12-230-303 [similar]
12-5.5-103(1)(e)	12-230-104(1)(e)	12-5.5-303(1)(a)	12-20-405(1)(a)
12-5.5-103(1)(f)	12-230-104(1)(f)	12-5.5-303(1)(b)	12-20-405(1)(b)
12-5.5-103(1)(g)	12-230-104(1)(g)	12-5.5-303(2)(a)	12-20-405(2)(a)

Prior to October 1, 2019	October 1, 2019 and Thereafter	Prior to October 1, 2019	October 1, 2019 and Thereafter
12-5.5-103(1)(h)	12-230-104(1)(h)	12-5.5-303(2)(b)	12-20-405(2)(b)
12-5.5-103(1)(i)	12-230-104(1)(i)	12-5.5-303(2)(c)(l)	12-20-405(2)(c)(l)
12-5.5-103(1)(j)	12-230-104(1)(j)	12-5.5-303(2)(c)(II)	12-20-405(2)(c)(II)
12-5.5-104	12-230-105	12-5.5-303(2)(c)(III)	12-20-405(2)(c)(III)
12-5.5-105	12-230-106	12-5.5-303(2)(c)(IV)	12-20-405(2)(c)(IV)
12-5.5-105(1), (2)	12-230-106	12-5.5-303 IP(3)	12-20-405 IP(3)
12-5.5-201	12-230-201	12-5.5-303(3)(a)	12-20-405(3)(a)
12-5.5-201(1)	12-230-201(1)	12-5.5-303(3)(b)	12-20-405(3)(b)
12-5.5-201(2)(a)	12-230-201(2)(a)	12-5.5-303(3)(c)	12-20-405(3)(c)
12-5.5-201 IP(2)(b)	12-230-201 IP(2)(b)	12-5.5-303(4)	12-20-405(4)
12-5.5-201(2)(b)(l)	12-230-201(2)(b)(l)	12-5.5-303(5)	12-20-405(5)
12-5.5-201 IP(2)(b)(II)	12-230-201 IP(2)(b)(II)	12-5.5-303(6)	12-230-303(2) [similar]
12-5.5-201(2)(b)(II)(A)	12-230-201(2)(b)(II)(A)	12-5.5-304	Repealed
12-5.5-201(2)(b)(II)(B)	12-230-201(2)(b)(II)(B)	12-5.5-401	12-230-401
12-5.5-201(2)(b)(II)(C)	12-230-201(2)(b)(II)(C)	12-5.5-401 IP(1)	12-230-401 IP(1)
12-5.5-201(2)(b)(II)(D)	12-230-201(2)(b)(II)(D)	12-5.5-401(1)(a)	12-230-401(1)(a)
12-5.5-201 IP(3)	12-230-201 IP(3)	12-5.5-401(1)(b)	12-230-401(1)(b)
12-5.5-201(3)(a)	12-230-201(3)(a)	12-5.5-401(1)(c)	12-230-401(1)(c)
12-5.5-201 IP(3)(b)	12-230-201 IP(3)(b)	12-5.5-401(1)(d)	12-230-401(1)(d)
12-5.5-201(3)(b)(l)	12-230-201(3)(b)(l)	12-5.5-401(1)(e)	12-230-401(1)(e)
12-5.5-201(3)(b)(II)	12-230-201(3)(b)(II)	12-5.5-401(1)(f)	12-230-401(1)(f)
12-5.5-202	12-230-202	12-5.5-401(1)(g)	12-230-401(1)(g)
12-5.5-202(1)(a)	12-230-202(1)(a)	12-5.5-401(1)(h)	12-230-401(1)(h)
12-5.5-202(1)(b)	12-230-202(1)(b)	12-5.5-401(1)(i)	12-230-401(1)(i)
12-5.5-202(1)(c)	12-230-202(1)(c)	12-5.5-401(1)(j)	12-230-401(1)(j)
12-5.5-202(2)	12-20-202(1)(a)	12-5.5-401(1)(k)	12-230-401(1)(k)
12-5.5-203	12-230-203	12-5.5-401(1)(l)	12-230-401(1)(l)
12-5.5-203 IP(1)	12-230-203 IP(1)	12-5.5-401(1)(m)	12-230-401(1)(m)
12-5.5-203(1)(a)	12-230-203(1)(a)	12-5.5-401(1)(n)	12-230-401(1)(n)
12-5.5-203(1)(b)	12-230-203(1)(b)	12-5.5-401(1)(o)	12-230-401(1)(o)
12-5.5-203(2)	12-230-203(2)	12-5.5-401(1)(p)	12-230-401(1)(p)
12-5,5-204	12-230-204	12-5.5-401(1)(q)	12-230-401(1)(q)