



# *Rhode Island Department of Health*

## **PUBLIC NOTICE**

The Director of the Rhode Island Department of Health has determined to amend the rules and regulations listed below to remove the specific dollar value of all fees for licensing, laboratory and administrative services provided by the Department of Health from the individual regulations and reference all such fees to a new consolidated fee regulation (to be promulgated separately). These amendments are proposed pursuant to the authority contained in Public Law 2012-241, enacted by the General Assembly on 15 June 2012, and the relevant sections of the respective professional practice and licensure acts.

### **The following seventy-five (75) regulations are proposed to be amended:**

1. Food Code
2. Rules and Regulations Establishing Educational and Experience Requirements for Registration as a Sanitarian
3. Rules and Regulations for Asbestos Control
4. Rules and Regulations for Bottled Water
5. Rules and Regulations for Certifying Analytical Laboratories
6. Rules and Regulations for Determination of Need for New Health Care Equipment and New Institutional Health Services
7. Rules and Regulations for Lead Poisoning Prevention
8. Rules and Regulations for Licensing Assisted Living Residences
9. Rules and Regulations for Licensing Athletic Trainers
10. Rules and Regulations for Licensing Birth Centers
11. Rules and Regulations for Licensing Chemical Dependency Professionals
12. Rules and Regulations for Licensing Clinical Laboratories and Stations
13. Rules and Regulations for Licensing Clinical Social Workers and Independent Clinical Social Workers
14. Rules and Regulations for Licensing Doctors of Acupuncture and Acupuncture Assistants
15. Rules and Regulations for Licensing Home Nursing Care Providers and Home Care Providers
16. Rules and Regulations for Licensing Hospice Care
17. Rules and Regulations for Licensing Interpreters for the Deaf
18. Rules and Regulations for Licensing Kidney Disease Treatment Centers
19. Rules and Regulations for Licensing Massage Therapists
20. Rules and Regulations for Licensing Mental Health Counselors and Marriage and Family Therapists
21. Rules and Regulations for Licensing Occupational Therapists and Occupational Therapy Assistants
22. Rules and Regulations for Licensing of Hospitals
23. Rules and Regulations for Licensing of Midwives
24. Rules and Regulations for Licensing of Nursing Facilities
25. Rules and Regulations for Licensing of Nursing Home Administrators
26. Rules and Regulations for Licensing Physical Therapists and Physical Therapist Assistants
27. Rules and Regulations for Licensing Psychologists
28. Rules and Regulations for Licensing Rehabilitation Hospital Centers

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29. Rules and Regulations for Licensing Respiratory Care Practitioners
30. Rules and Regulations for Licensing Speech Pathologists and Audiologists
31. Rules and Regulations for Licensing Swimming and Wading Pools, Hot Tubs, and Spas
32. Rules and Regulations for Licensure and Discipline of Chiropractic Physicians
33. Rules and Regulations for Limited Medical Registration
34. Rules and Regulations for Radon Control
35. Rules and Regulations for the Certification of Administrators of Assisted Living Residences
36. Rules and Regulations for the Certification of Health Plans
37. Rules and Regulations for the Control of Radiation
38. Rules and Regulations for the Licensing of Freestanding Ambulatory Surgical Centers
39. Rules and Regulations for the Licensing of Freestanding Emergency Care Facilities
40. Rules and Regulations for the Licensing of Nurses and Standards for the Approval of Basic Nursing Education Programs
41. Rules and Regulations for the Licensing of Nursing Service Agencies
42. Rules and Regulations for the Licensing of Organized Ambulatory Care Facilities
43. Rules and Regulations for the Licensing of Podiatrists
44. Rules and Regulations for the Licensing of Radiographers, Nuclear Medicine Technologists, Radiation Therapists and Radiologist Assistants
45. Rules and Regulations for the Licensure and Discipline of Physicians
46. Rules and Regulations for the Licensure of Barbers, Hairdressers/Cosmeticians, Manicurists, Estheticians, and Instructors
47. Rules and Regulations for the Licensure of Clinical Laboratory Science Practitioners
48. Rules and Regulations for the Licensure of Physician Ambulatory Surgery Centers and Podiatry Ambulatory Surgery Centers
49. Rules and Regulations for the Licensure of Physician Assistants
50. Rules and Regulations for the Licensure of Veterinarians
51. Rules and Regulations for the Registration of Body Piercing Technicians and Body Piercing Establishments
52. Rules and Regulations for the Registration of Distributors of Controlled Substances in Rhode Island
53. Rules and Regulations for the Registration of Tanning Facilities
54. Rules and Regulations for the Registration of Tattoo Artists and Tattoo Parlors
55. Rules and Regulations for the Utilization Review of Health Care Services
56. Rules and Regulations Governing Vital Statistics
57. Rules and Regulations Pertaining to Certification of Managers in Food Safety
58. Rules and Regulations Pertaining to Dentists, Dental Hygienists, and Dental Assistants
59. Rules and Regulations Pertaining to Embalmers, Funeral Directors, and Funeral Service Establishments
60. Rules and Regulations Pertaining to Opticians
61. Rules and Regulations Pertaining to Optometrists
62. Rules and Regulations Pertaining to Permits for Screening Programs
63. Rules and Regulations Pertaining to Pharmacists, Pharmacies and Manufacturers, Wholesalers, and Distributors
64. Rules and Regulations Pertaining to Public Drinking Water
65. Rules and Regulations Pertaining to Rhode Island Certificates of Registration for Nursing Assistants, Medication Aides, and the Approval of Nursing Assistant and Medication Aide Training Programs
66. Rules and Regulations Pertaining to the Certification of Public Drinking Water Supply Treatment and Public Water Supply Transmission and Distribution Operators

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67. Rules and Regulations Pertaining to the Licensing of Dietitians/Nutritionists
  68. Rules and Regulations Pertaining to the Medical Examiner System
  69. Rules and Regulations Pertaining to the Newborn Metabolic, Endocrine, and Hemoglobinopathy Screening Program and the Newborn Hearing Loss Screening Program
  70. Rules and Regulations Pertaining to the Processing and Distribution of Shellfish
  71. Rules and Regulations Prescribing Minimum Standards for Processing, Storage and Transportation of Fish and Fishery Products
  72. Rules and Regulations Related to the Licensure of Hearing Aid Dealers and Fitters
  73. Rules and Regulations Related to the Medical Marijuana Program
  74. Rules and Regulations Related to the Practice of Electrolysis
  75. Rules and Regulations Relating to Emergency Medical Services
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Notice is hereby given in accordance with the provisions of §42-35-3(a)(2) of the Rhode Island General Laws, as amended, that the Director is affording all interested persons the opportunity to submit data, views, or arguments in writing on this matter. Opportunity for public hearing shall be granted if requested by twenty-five (25) persons, by a government subdivision or agency, or by an association having not less than twenty-five (25) members. *Otherwise, no hearing shall be convened.* Should a hearing be requested by twenty-five (25) persons, by a government subdivision or agency, or by an association having not less than twenty-five (25) members, *a hearing shall be scheduled only for the regulation(s) for which the request for hearing was received.* All regulations for which a public hearing is not requested will be filed with the Rhode Island Secretary of State pursuant to Chapter 42-35 of the Rhode Island General Laws, as amended, shortly after the **10 September 2012** deadline (as below).

Such input or requests for public hearing must be received in writing **no later than Monday, 10 September 2012**. Such input or requests should be addressed to: Michael Fine, M.D., Director, Rhode Island Department of Health, Three Capitol Hill, Room #401, Providence, Rhode Island 02908-5097.

In the development of these amendments, consideration was given to the following: (1) alternative approaches; and (2) overlap or duplication with other statutory and regulatory provisions. No alternative approach, duplication, or overlap was identified based upon available information.

Copies of all regulations are available for public inspection in the Cannon Building, Room #201, Rhode Island Department of Health, Three Capitol Hill, Providence, Rhode Island 02908-5097, on the Secretary of State's website: <http://www.sos.ri.gov/rules/>, by calling 401-222-7767, or by e-mail to [Bill.Dundulis@health.ri.gov](mailto:Bill.Dundulis@health.ri.gov).

Signed this 3<sup>rd</sup> day of August 2012

*Original signed by Michael Fine, MD*

Michael Fine, M.D., Director of Health

**RULES AND REGULATIONS**  
**RELATED TO THE LICENSURE OF**  
**HEARING AID DEALERS AND FITTERS**  
(R5-49-HAD)



STATE OF RHODE ISLAND & PROVIDENCE PLANTATIONS  
Department of Health  
February 1999

*As amended:*

December 2000

November 2001

January 2002 (re-filing in accordance with  
the provisions of section 42-35-4.1 of the Rhode  
Island General Laws, as amended)

May 2005

January 2007 (re-filing in accordance with  
the provisions of section 42-35-4.1 of the Rhode  
Island General Laws, as amended)

January 2012 (re-filing in accordance with  
the provisions of section 42-35-4.1 of the Rhode  
Island General Laws, as amended)

**August 2012 (Proposed)**

***COMPILER'S NOTES:***

**Proposed Additions: Underlined**

**Proposed Deletions: ~~Strikeouts~~**

## ***INTRODUCTION***

These *Rules and Regulations Related to the Licensure of Hearing Aid Dealers and Fitters* are promulgated pursuant to the authority conferred under Chapters 42-35 and 5-49 of the General Laws of Rhode Island, as amended, and are adopted for the purpose of establishing prevailing standards for the licensure of hearing aid dealers and fitters in this state.

Pursuant to the provisions of section 42-35-3(c) of the General Laws of Rhode Island, as amended, consideration was given in arriving at the regulations to: (1) alternative approaches to the regulations; (2) duplication or overlap with state regulations, by referencing all applicable laws; and (3) significant economic impact on small business, as defined in Chapter 42-35 of the General Laws, as amended, which could result from the regulations.

No alternative approach, no known overlap or duplication, nor any significant economic impact was identified. Therefore, these regulations are adopted in the best interest of the health and safety of the public.

These rules and regulations shall supersede any previous rules and regulations related to the licensure of hearing aid dealers and fitters promulgated by the Department of Health and filed with the Secretary of State.

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## Part I *Definitions and Licensure Requirements*

### Section 1.0 *Definitions*

Wherever used in these rules and regulations, the terms listed below shall be construed as follows:

- 1.1 “**Act**” means Chapter 5-49 of the Rhode Island General Laws, as amended, entitled “Hearing Aid Dealers and Fitters.”
- 1.2 “**Audiologist**” means a person who has been awarded a certificate of competency by the American Speech and Hearing Association and who is duly licensed by the Department.
- 1.3 “**The Board**” means the Board of Hearing Aid Dealers and Fitters.
- 1.4 “**Certificate of need**”, as used herein, means the documentation of a medical evaluation that is required prior to the purchase of a hearing aid in accordance with federal and state laws.
- 1.5 “**Direct supervision**,” as used herein, means the licensed hearing aid dealer and fitter personally authorizes and oversees the activities of the temporary permit holder, remains on-site while these activities are being performed, and reviews the results.
- 1.6 “**Department**” means the Department of Health.
- 1.7 “**Hearing aid**” means any wearable instrument or device designed for or offered for the purpose of aiding or compensating for impaired human hearing and any parts, attachments, or accessories, including ear mold, but excluding batteries and cords.
- 1.8 “**License**” means a license issued by the state under the Act to hearing aid dealers and fitters.
- 1.9 “**Practice of fitting and dealing in hearing aids**” means the evaluation and measurement of human hearing by means of an audiometer or by any other means solely for the purpose of making selections, adaptations, or sale of hearing aids. The term also includes the making of impressions for ear molds. This term does not include the making of audiograms for a physician or a member of related professions for use in consultation with the hard of hearing.
- 1.10 “**Sell**” or “**sale**” means any transfer of title or of the right to use by lease, bailment, or any other contract, excluding wholesale transactions with distributors or dealers.
- 1.11 “**Temporary permit**” means a permit issued while the applicant is in training to become a licensed hearing aid dealer and fitter.

### Section 2.0 *Qualifications of Applicants and Licensure Requirements*

#### *Qualifications of Applicants*

- 2.1 An applicant may obtain a license by successfully passing a qualifying examination (described in section 3.0 herein) provided the applicant:

- a) Is at least twenty-one (21) years of age;
- b) Is of good moral character;
- c) Has an education equivalent to a four-year course in an accredited high school;
- d) Is free of contagious or infectious disease.

***Duration of License and Fees***

- 2.2 Any person who shall desire to engage in the practice of fitting and dealing in hearing aids shall submit, in writing, an application for a license to engage therein to the Department.
  - a) Said application shall be accompanied by a fee ~~of sixty two dollars and fifty cents (\$62.50) made payable by check or money order to the General Treasurer, state of Rhode Island.~~ as set forth in the *Rules and Regulations Pertaining to the Fee Structure for Licensing, Laboratory and Administrative Services Provided by the Department of Health.*
- 2.3 The Department shall, without discrimination, register each applicant who passes an examination as provided in section 3.0 herein and upon the applicant's payment of ~~thirty one dollars and twenty five cents (\$31.25) per annum for each year of the term of license (i.e., sixty two dollars and fifty cents (\$62.50) for two (2) years)~~ the fee as set forth in the *Rules and Regulations Pertaining to the Fee Structure for Licensing, Laboratory and Administrative Services Provided by the Department of Health* shall issue to the applicant a license signed by the Department. The total fee for the entire term of licensure shall be paid prior to the issuance of the license.
- 2.4 A license under the Act shall confer upon the holder the right to engage in the practice of fitting and dealing in hearing aids.
- 2.5 Each person who engages in the fitting and sale of hearing aids shall keep that certificate conspicuously posted in his/her office or place of business at all times.
  - a) Where more than one office is operated by the licensee, duplicate certificates shall be issued by the Department for posting in each location.

***Renewal of License***

- 2.6 All hearing aid dealer and fitter licenses shall expire on the 31st day of January of each even-numbered year, unless sooner suspended or revoked, and shall be renewed for the next ensuing two (2) years by the Department upon payment to it of a biennial renewal fee ~~of sixty two dollars and fifty cents (\$62.50) as set forth in the *Rules and Regulations Pertaining to the Fee Structure for Licensing, Laboratory and Administrative Services Provided by the Department of Health*~~ for each such renewal.
- 2.7 A thirty (30) day grace period shall be allowed during which time licenses may be renewed on payment of a fee ~~of twenty five dollars (\$25.00) per annum~~ as set forth in the *Rules and Regulations Pertaining to the Fee Structure for Licensing, Laboratory and Administrative*

Services Provided by the Department of Health for each year of the term of renewal to the Department.

- a) After expiration of the grace period, the Department may renew those certificates upon payment of ~~twenty-five dollars (\$25.00) per annum~~ the fee set forth in the *Rules and Regulations Pertaining to the Fee Structure for Licensing, Laboratory and Administrative Services Provided by the Department of Health* for each year of the term of renewal to the Department.
- 2.8 No person who applies for renewal, whose license has expired, shall be required to submit to any examination as a condition to renewal, provided the renewal application is made within two (2) years from the date of that expiration.

### ***Restrictions on License***

- 2.9 No person shall engage in the practice of fitting and dealing in hearing aids or display a sign or in any other way advertise or represent himself/herself as a person who practices the fitting and sale of hearing aids unless he/she holds an unsuspended, unrevoked license issued by the Department as provided in the Act.
- 2.10 Nothing in the Act shall prohibit a corporation, partnership, trust, association or other like organization maintaining an established business address from engaging in the business of selling or offering for sale hearing aids at retail without a license, provided that it employs persons licensed to engage in the practice of fitting and dealing in hearing aids.
- a) Those corporations, partnerships, trusts, associations or other like organizations shall file annually with the Board a list of all licensed hearing aid dealers and fitters directly or indirectly employed by it. Those organizations shall also file with the Board a statement, on a form approved by the Board, that they submit themselves to the rules and regulations herein and the provisions of the Act which the Department shall deem applicable to them.

### ***Licensure by Endorsement***

- 2.11 a) Whenever the Board determines that another state or jurisdiction has requirements equivalent to or higher than those in effect pursuant to the Act and that such state or jurisdiction has a program equivalent to or stricter than the program for determining whether applicants pursuant to the Act are qualified to dispense and fit hearing aids, the Department may issue certificates of endorsement to applicants who hold current, unsuspended and unrevoked certificates or licenses to fit and sell hearing aids in that other state or jurisdiction.
- b) No such applicants for certificate of endorsement shall be required to submit to or undergo a qualifying examination, etc., other than the payment of fees, pursuant to section 5-49-11 of the Act.
  - c) Individuals licensed by endorsement shall be registered in the same manner as licensees.

- d) The fee for an initial certificate of endorsement shall be the same as the fee for an initial license (~~i.e., sixty-two dollars and fifty cents (\$62.50)~~ and as set forth in the Rules and Regulations Pertaining to the Fee Structure for Licensing, Laboratory and Administrative Services Provided by the Department of Health. Fees, grounds for renewal and procedures for the suspension and revocation of certificates of endorsement shall be the same as for renewal, suspension and revocation of a license.

***Notice to Department of Place of Business***

- 2.12 a) A person who holds a license shall notify the Department in writing of the regular address of the place or places where he/she engages or intends to engage in the sale of or practice of fitting and dealing in hearing aids.
- b) Any notice required to be given by the Department to a person who holds a license shall be mailed to him/her by certified mail at the address of the last place of business of which he/she has notified the Department.

**Section 3.0 *Examination Requirements***

- 3.1 Applicants for license by examination shall appear at a time, place and before such persons as the Department may designate to be examined by means of written and practical tests in order to demonstrate that he/she is qualified to practice the fitting and sale of hearing aids.
  - 3.1.1 For written examination, the Board, or its designee, shall administer the current International Hearing Society or other national examination for hearing aid fitters and dealers, as may be approved by the Board.
  - 3.1.2 The Board shall adopt a practical examination that meets the requirements of section 3.6(b) below.
- 3.2 The examinations administered, as directed by the Board, constituting standards for licensing shall not be conducted in such a manner that college training is required in order to pass the examination.
- 3.3 Nothing in these examinations shall imply that the applicant shall possess the degree of medical competence normally expected of physicians.
- 3.4 The Department shall issue to each person successfully passing the examinations, where an examination is required, and who otherwise satisfies the Department of his/her qualifications, a license entitling him/her to practice said business in this state for the biennial period stated in the license, or until said license shall be revoked or suspended, as hereinafter provided.
- 3.5 In case of failure of any applicant to satisfactorily pass the examinations, such applicant shall be entitled to re-examinations. Any examination fees shall be resubmitted upon re-examination.
  - 3.5.1 An applicant who fails to pass the written and practical examinations twice shall not be eligible for further examinations until the applicant has satisfactorily completed

additional preparation as directed and approved by the Board. This condition for eligibility also applies to each subsequent failure.

### ***Scope of examination***

- 3.6 The qualifying examination provided in section 5-49-7 of the Act shall be designed to demonstrate the applicant's adequate technical qualifications by:
- (a) Tests of knowledge in the following areas as they pertain to the fitting and sale of hearing aids:
    - (i) Basic physics of sound;
    - (ii) The anatomy and physiology of the ear;
    - (iii) The function of hearing aids;
    - (iv) Chapter 6-45 of the Rhode Island General Laws, as amended (so-called "lemon law");
    - (v) Rules and regulations as contained herein.
  - (b) Practical tests of proficiency in the following techniques as they pertain to the fitting of hearing aids:
    - (i) Pure tone audiometry, including air conduction testing and bone conduction testing;
    - (ii) Live voice or recorded voice speech audiometry, including speech reception threshold testing and speech discrimination testing;
    - (iii) Masking when indicated;
    - (iv) Recording and evaluation of audiograms and speech audiometry to determine proper selection and adaptation of a hearing aid;
    - (v) Taking ear mold impressions;
    - (vi) Evidence of knowledge regarding the medical and rehabilitation facilities for children and adults in the area being served.

### **Section 4.0 *Temporary Permits***

- 4.1 An applicant who fulfills the requirements regarding age, character, education and health as set forth in section 2.1 (above) may obtain a temporary permit upon application to the Department. Previous experience or a waiting period shall not be required to obtain a temporary permit.
- 4.2 Upon receiving an application as provided in section 2.2 herein and accompanied by a fee of ~~twenty five dollars (\$25.00)~~, as set forth in the *Rules and Regulations Pertaining to the Fee Structure for Licensing, Laboratory and Administrative Services Provided by the Department of Health*, the Department shall issue a temporary permit which shall entitle the applicant to engage in the fitting and sale of hearing aids for a period of one (1) year.
- a) A person holding a valid hearing aid dealer's and fitter's license shall be responsible for the supervision and training of that applicant, the documentation of the required

supervision and training, and the maintenance of adequate personal contact with the applicant. At a minimum, this supervision and training shall include:

- i) Twenty (20) hours per week of direct supervision for the first thirty (30) days of training;
  - ii) Review of all audiograms, sales and other records for the second thirty (30) days of training; and
  - iii) Periodic review of audiograms, sales and other records for the remainder of the training period.
- b) Until such time as an applicant has met all licensing requirements described herein, he/she shall advise any potential purchasers that he/she is a temporary permit holder.
  - c) If an applicant is unable to pass the licensing examination within one (1) year from the date of issuance of the temporary permit, said applicant shall remain as a temporary permit holder and the level of supervision required in section 4.2 (a) above shall continue until such time as the licensing examination is successfully completed, but no later than two (2) years from the date of issuance of the temporary permit. Provided, however, a temporary permit shall not be renewed unless the applicant has sat for the written examination within the first year after the temporary permit has been issued.
- 4.3 If a person who holds a temporary permit under this section has not successfully passed the licensing examination within one (1) year from the date of issuance, the temporary permit may be renewed or reissued once upon payment of a ~~twenty five dollars (\$25.00)~~ fee as set forth in the *Rules and Regulations Pertaining to the Fee Structure for Licensing, Laboratory and Administrative Services Provided by the Department of Health.*

#### Section 5.0 *Persons and Practices Exempted*

- 5.1 The Act is not intended to prevent any person from engaging in the practice of measuring human hearing for the purpose of selection of hearing aids provided that person or organization employing such person does not sell hearing aids, unless otherwise authorized to do so by law .
- 5.2 The Act does not apply to a person who is a physician licensed to practice in Rhode Island under the provisions of Chapter 5-37 of the Rhode Island General Laws, as amended, or to an audiologist licensed pursuant to Chapter 5-48 of the Rhode Island General Laws, as amended, provided that person or organization does not engage in the sale of hearing aids, unless otherwise authorized to do so by law.

## Part II *Administrative Requirements*

### Section 6.0 *Certificates of Need and Other Requirements Prior to Delivery of Services*

- 6.1 No person, firm, association or corporation shall sell or attempt to sell or otherwise make available any hearing aid instrument or hearing prosthetic device to a prospective consumer or purchaser unless that consumer or purchaser has first obtained and presented to the seller a certificate of need on forms prescribed and furnished by the Director, signed by a physician duly licensed in the state under the provisions of Chapter 37 of Title 5, as amended, attesting thereon that pursuant to an otological examination no more than six (6) months prior to the sale of the hearing aid, it is his/her diagnosis that the prospective patient-purchaser has a hearing impediment of such a nature as to indicate the need for a hearing aid instrument or hearing prosthetic device.
- 6.2 Pursuant to federal requirements, an adult (i.e., person aged eighteen [18] years or older) prospective purchaser may waive the medical evaluation requirement provided that said purchaser has been informed that the exercise of said waiver is not in the purchaser's best interest.
  - a) A statement shall be signed by the prospective purchaser indicating informed consent regarding the waiver described in section 6.2 (above). Said statement shall be retained for no less than three (3) years by the licensee in accordance with federal requirements.
- 6.3 Any person engaging in the practice of fitting and dealing in hearing aids will, when dealing with a child ten (10) years of age or under, ascertain whether the child has been examined by an otolaryngologist or primary care physician and an audiologist for his/her recommendation within ninety (90) days prior to the fitting. If that not be the case, a recommendation to do so must be made and such an examination must be conducted before the sale of any hearing aid.
- 6.4 Prior to delivery of services or products to the prospective purchaser, a licensee shall provide discussion of amplification or aural rehabilitation options appropriate to the hearing loss and communication needs presented by the patient.
- 6.5 The licensee shall deliver information, either written or oral, appropriate to the patient's needs and options under discussion, including, but not limited to, types of circuitry, telecoils, or programmability, and if applicable, estimated unit prices for the following service: hearing aid(s), accessories, service contracts, hearing aid (loss and damage) insurance, health care coverage, warranty, financing, and related goods and services.

### Section 7.0 *Records of Transactions*

- 7.1 Every person, firm, association or corporation shall keep a permanent record of all sales or other transactions whereby a hearing aid instrument or hearing prosthetic device is made available.
- 7.2 Each record of a transaction shall have attached thereto the certificate of need, or signed waiver, presented by the prospective purchaser and shall be retained for a period of three (3) years and be kept open for inspection by any official designated by the Director.

## Section 8.0 *Receipt Required*

- 8.1 Any person who engages in the practice of fitting and dealing in hearing aids shall deliver to each person supplied with a hearing aid a receipt which shall contain the licensee's signature and show his/her business address and the number of his/her certificate together with specifications as to the make and model of the hearing aid furnished, full terms of sale clearly stated.
- 8.2 If an aid which is not new is sold, the receipt and the container thereof shall be clearly marked as "used" or "reconditioned" whichever is applicable, with terms of guarantee, if any.
- 8.3 The receipt shall bear in no smaller type than the largest used in the body copy portion the following: The purchaser has been advised at the outset of his/her relationship with the hearing aid dealer that any examination(s) or representation(s) made by a licensed hearing aid dealer and fitter in connection with the fitting and selling of this hearing aid(s) 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.
- 8.4 The receipt, covering agreements consummated at any place other than at an address of the seller, shall contain the following statement, "You may cancel this agreement if it has been consummated by a party hereto at any place other than at a business address of the seller by a written notice directed to a business address of the seller by registered mail, telegram, or delivery, not later than midnight of the third business day following the signing of the agreement."
- 8.5 At the time of delivery of selected amplification, the dispenser shall deliver a written delivery receipt containing the following:
- i) business name, full address, and Department of Health license number of the dispenser;
  - ii) name, full address of patient and purchaser;
  - iii) the instrument identification including manufacturer, model, serial number;
  - iv) identification of used or reconditioned units;
  - v) the total price and applicable warranty time periods of instrumentation and accessories such as earmolds, batteries, cords, etc;
  - vi) any additional insurance that has been placed on the instrument;
  - vii) all services included by the dispenser program as part of the complete amplification package (i.e., follow-up visits, reprogramming visits in the event the instrument is programmable);
  - viii) a notice conspicuously in type that is at least four points larger than the surrounding text: "A hearing aid will not restore normal hearing. The purchaser has a thirty (30) day trial period during which time she/he may return the instrument, in the original condition less normal wear, with no further financial obligation. This product is protected by Chapter 45 of Title 6 entitled "Enforcement of Assistive Technology Warranties" which shall be made available by the dispenser, upon request." The purchaser shall have access to the dispenser during the trial period, in order to receive appropriate follow-up monitoring, (i.e., modification, adjustment, reprogramming, or shell refit), in order to optimize

comfort and instrument benefit). The trial period may be extended beyond thirty (30) days if agreed to in writing by the dispenser and the consumer.

- ix) All professional and service fees are clearly stated in the contract. Refund is made to the customer within ten (10) days of return;
- x) signature of dispenser and name in print;
- xi) signature of patient;
- xii) date of purchase; and,
- xiii) Department of Health license number.

Part III ***Board Composition / Complaints / Penalties / Practices and Procedures / Severability***

Section 9.0 ***Board Composition, Meetings and Duties***

- 9.1 There shall be established a Board of Hearing Aid Dealers and Fitters which shall guide, advise, and make recommendations to the Department.
- 9.2 Members of the Board shall be residents of the state. The Board shall consist of three (3) hearing aid dealers and fitters, one otolaryngologist, one audiologist, and one lay member who is a user of hearing aids and not employed in the practice of fitting and dealing in hearing aids. Each hearing aid dealer and fitter on the Board shall have no less than five (5) years experience and shall hold a valid license as a hearing aid dealer and fitter, as provided under the Act. Exception shall be the hearing aid dealers and fitters of the first Board appointed, who shall have no less than five (5) years of experience and shall fulfill all qualifications under section 5-49-7 of the Act.
- 9.3 All members of the Board shall be appointed by the Governor. The term of office of each member shall be for three (3) years, excepting that of the members of the first Board appointed under the Act, two (2) shall be appointed for two (2) years; two (2) shall be appointed for three (3) years; and two (2) shall be appointed for four (4) years. Before a member's term expires, the Governor shall appoint a successor to assume his/her duties on the expiration of his/her or her predecessor's term. A vacancy in the office of a member shall be filled by appointment for the unexpired term. The members of the Board shall annually designate one (1) member to serve as chair and another to serve as secretary-treasurer. No member of the Board who has served two (2) or more full terms may be reappointed to the Board until at least one (1) year after the expiration of the most recent full term of office.

***Duties of the Board***

- 9.4 The Board shall advise the Department in all matters relating to the Act, shall prepare the examinations required by the Act for the Department and shall assist the Department in carrying out the provisions of the Act.
- 9.5 The Department shall be guided by the recommendations of the Board in all matters relating to the Act.

***Board Meetings***

- 9.6 The Board shall meet not less than six (6) times each year at a place, day and hour determined by the Board. The Board shall also meet at such other times and places as may be requested by the Department.

Section 10.0 ***Prohibited Acts and Practices***

- 10.1 No person shall:
- (1) Sell, barter or offer to sell or barter a license;

- (2) Purchase or procure by barter a license with intent to use it as evidence of holder's qualifications to practice the fitting and sale of hearing aids;
- (3) Alter a license with fraudulent intent;
- (4) Use or attempt to use as a valid license a license which has been purchased, fraudulently obtained, counterfeited, or materially altered;
- (5) Willfully make a false statement in an application for license or application for renewal of a license.

### Section 11.0 *Complaints*

- 11.1 Any person wishing to make a complaint against a licensee under the Act shall reduce the same to writing and file this complaint to the Department within one (1) year from the date of the action upon which the complaint is based.
- 11.2 If the Department determines the charges made in the complaint are sufficient to warrant a hearing to determine whether the license issued under the Act shall be suspended or revoked, it shall make an order fixing a time and place for a hearing and require the licensee complained against to appear and defend against the complaint. The order shall have annexed thereto a copy of the complaint.
- 11.3 The order and copy of the complaint shall be served upon the licensee at least twenty (20) days before the date set for hearing, either personally or by registered mail sent to licensee's last known address.
- 11.4 Continuances or adjournment of hearing date shall be made if for good cause. At the hearing, the licensee complained against may be represented by counsel.
- 11.5 The licensee complained against and the Department shall have the right to take depositions in advance of hearing and after service of the complaint, and either party may compel the attendance of witnesses by subpoenas issued by the Department under its seal.
- 11.6 Either party taking depositions shall give at least five (5) days' written notice to the other party of the time and place of those depositions, and the other party shall have the right to attend (with counsel if desired) and cross-examine.
- 11.7 Appeals from the imposition of disciplinary sanctions shall be taken in accordance with the Administrative Procedures Act.

### Section 12.0 *Other Rights and Remedies*

- 12.1 The rights and remedies provided to a purchaser by the Act are in addition to and shall not be construed to abrogate or diminish any rights and remedies the purchaser may have under other laws, including but not limited to, Chapter 2 of Title 6A, Chapter 2.1 of Title 6A, and to Chapter 45 of Title 6.

### Section 13.0 *Proceedings for Revocation or Suspension of Licenses*

- 13.1 Any person registered under the Act may have his/her license revoked or suspended for a fixed period by the Department for any of the following causes:
- (1) The conviction of a felony, or a misdemeanor involving moral turpitude. The record of conviction, or a certified copy thereof, certified by the clerk of the court or by the judge in whose court the conviction is had, shall be conclusive evidence of such conviction.
  - (2) Procuring of license by fraud or deceit practiced upon the Department.
  - (3) Unethical conduct, including:
    - (i) The obtaining of any fee or the making of any sale by fraud or misrepresentation.
    - (ii) Knowingly employing directly or indirectly any suspended or unregistered person to perform any work covered by the Act.
    - (iii) Using or causing or promoting the use of any advertising matter, promotional literature, testimonial, guarantee, warranty, label, brand, insignia or any other representation, however disseminated or published, which is misleading, deceptive or untruthful.
    - (iv) Advertising a particular model or type of hearing aid for sale when purchasers or prospective purchasers responding to the advertisement cannot purchase the advertised model or type, where it is established that the purpose of the advertisement is to obtain prospects for the sale of a different model or type than that advertised.
    - (v) Representing 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.
    - (vi) Habitual intemperance.
    - (vii) Gross immorality.
    - (viii) Permitting another's use of a license.
    - (ix) Advertising a manufacturer's product or using a manufacturer's name or trademark which implies a relationship with the manufacturer that does not exist.
    - (x) Directly or indirectly giving or offering to give, or permitting or causing to be given money or anything of value to any person who advises another in a professional capacity as an inducement to influence him or have him influence others to purchase or contract to purchase products sold or offered for sale by a hearing aid dealer or fitter, or influencing persons to refrain from dealing in the products of competitors.
    - (xi) Misrepresenting when such is not the case, that the hearing aid is or will be "custom-made", "made to order", or "prescription made", or in any other sense specially fabricated for an individual person.

- (4) Knowingly placing the health of a client at serious risk without maintaining proper precautions;
- (5) Engaging in the fitting and sale of hearing aids under a false name or alias with fraudulent intent.
- (6) Selling a hearing aid to a person who has not been given tests utilizing appropriate established procedures and instrumentation in fitting of hearing aids, except in cases of selling replacement hearing aids, or selling a hearing aid to a person who has discharge from the ear, loss of balance and dizzy spells, a loss of hearing for less than ninety (90) days, unless that person has received a prescription from a physician.
- (7) Gross incompetence or negligence in fitting and selling hearing aids.
- (8) Violating any provisions of the Act or the rules and regulations herein.

#### Section 14.0 *Penalties for Violations*

- 14.1 Violation of any provisions of the Act shall be punishable, upon conviction, by a fine of not more than five hundred dollars (\$500) or by imprisonment for not more than ninety (90) days, or both.
- 14.2 Any person, firm, association or corporation who sells or attempts to sell or otherwise makes available a hearing aid instrument or hearing prosthetic device without a certificate of need and/or fails to keep records as prescribed in section 5-49-2.2 of the Act and any physician who shall issue a certificate of need not in conformance with section 5-49-2.1 of the Act shall be guilty of a misdemeanor and upon conviction shall be fined not more than five hundred dollars (\$500) for each offense. Each violation of a provision of the Act shall constitute a separate offense.

#### Section 15.0 *Rules Governing Practices and Procedures*

- 15.1 All hearings and reviews required under the provisions of Chapter 5-49 of the Rhode Island General Laws, as amended, shall be held in accordance with the *Rules and Regulations of the Rhode Island Department of Health Regarding Practices and Procedures Before the Department of Health and Access to Public Records of the Department of Health (R42-35-PP)* of reference 1.

#### Section 16.0 *Severability*

- 16.1 If any provisions of these rules and regulations or the application thereof to any persons or circumstances shall be held invalid, such invalidity shall not affect the provisions or application of the rules and regulations which can be given effect, and to this end the provisions of the rules and regulations are declared to be severable.

## **REFERENCES**

1. *Rules and Regulations of the Rhode Island Department of Health Regarding Practices and Procedures Before the Department of Health and Access to Public Records of the Department of Health (R42-35-PP)*, Rhode Island Department of Health, April 2004 and subsequent amendments thereto.
2. “Consumer Enforcement of Assistive Technology Device Warranties”, Chapter 6-45 of the Rhode Island General Laws, as amended. Available online:  
**<http://www.rilin.state.ri.us/Statutes/TITLE6/6-45/INDEX.HTM>**