Chapter 67

*** AUDIOLOGISTS AND HEARING AID DISPENSERS ***

Sub-Chapters: General Provisions for Audiologists and Hearing Aid Dispensers

Sec. X 26 V.S.A. § 3281 is amended to read:

Definitions

As used in this chapter:

(1) "Audiologist" means any person who has at least an M.A. or M.S. degree in audiology, at least 300 hours of supervised practical training, and is eligible for the American Speech-Language-Hearing Association Certificate of Clinical Competence in audiology, and provides services to the public under any title incorporating the terms audiology, audiologist, audiological, hearing clinic, hearing clinician, hearing or aural rehabilitation, or hearing specialist a person licensed to practice audiology under this chapter.

(2) "Audiology" means the application of principles, methods, and procedures related to hearing and the disorders of hearing, and to related language and speech disorders, which includes all conditions that impede the normal process of human communication, including disorders of auditory sensitivity, acuity, function, or processing.

(3) "Director" means the Director of the Office of Professional Regulation.

(4) "Disciplinary action" includes any action taken by an administrative law officer established by 3 V.S.A. § 129(j) against a licensed audiologist or hearing aid dispenser or an applicant premised on a finding that the licensee or applicant has engaged in unprofessional conduct. "Disciplinary action" includes all appropriate remedies, including obtaining injunctions, refusing to grant or renew a license, suspending or revoking a license or issuing warnings.

(5) "Dispensing hearing aids" means conducting and interpreting hearing tests for the purpose of selecting suitable hearing aids, making earmolds or impressions, and providing instruction, and includes all acts pertaining to selling, renting, leasing, pricing, delivering, and giving warranties for hearing aids.

(6) "Hearing aid" means an amplifying device to be worn by a person who is hard of hearing to improve hearing, including any accessories specifically used in connection with such a device, but excluding theater- or auditorium-wide-area listening devices, telephone amplifiers, or other devices designed to replace a hearing aid for restricted situations.

(7) "Hearing aid dispenser" includes any person who means a person licensed under this chapter to dispenses hearing aids in or into Vermont.

(8) "Director" means the Director of the Office of Professional Regulation.

(9) "Practice of audiology" includes the following services which may be provided to persons of all ages:

(A) facilitating the conservation of auditory system function, and developing and implementing environmental and occupational hearing conservation programs;
(B) screening, identifying, assessing and interpreting, diagnosing, preventing, and rehabilitating peripheral and central auditory system dysfunctions;

(C) providing and interpreting behavioral and electro-physiological measurements of auditory, vestibular, and facial nerve functions;

(D) selecting, fitting, and dispensing of hearing aids, amplification, assistive listening and alerting devices, implantable devices, and other systems, and providing training in their use;

(E) dispensing hearing aids, including conducting and interpreting hearing tests for the purpose of selecting suitable hearing aids;

(F) making ear molds or impressions;

(G) providing instruction to patients on the care and use of hearing aids, auditory system functions, and hearing conservation;

(H) all acts pertaining to selling, renting, leasing, pricing, delivering, and giving warranties for hearing aids;

(I) providing aural rehabilitation and related counseling services to individuals who are hard of hearing and their families;

(J) screening of speech-language and other factors affecting communication function for the purposes of an audiologic evaluation, or initial identification of individuals with other communication disorders; and

(K) management of cerumen.

(8) “Practice of dispensing hearing aids” includes the following services which may only be provided to persons 18 years of age or older:

(A) the measurement of the sensitivity of human hearing by means of appropriate behavioral testing for the sole purpose of fitting air-conduction hearing aids;

(B) the otoscopic observation of the outer ear in connection with the measurement of hearing and the fitting of hearing aids and for the purpose of referral to other professionals;

(C) the production of ear impressions for earmolds for the purpose of selecting and fitting hearing aids;

(D) the analysis of hearing aid function by means of the appropriate testing equipment;

(E) the selection and fitting of hearing aids with appropriate instruction, orientation, counseling and management regarding the use and maintenance of these devices and other accessories; and

(F) the modification and general servicing of hearing aids.

(10) “Secretary” means the Secretary of State.
(a) A licensee shall maintain records relating to the sale of his or her goods and services and, upon request, shall make such records available to the director for review. A licensee shall maintain records required to be kept under this section for a period of at least seven years from the date of the sale.

(b) A licensee shall make the testing equipment available for periodic inspection by the director or the director’s designee, and shall have all testing equipment calibrated annually by the manufacturer or a qualified testing service in accordance with American National Standards Institute specifications.

(c) The director shall adopt rules implementing the provisions of this section.

Sec. X 26 V.S.A. § 3283 is amended to read:

Prices to be disclosed
A licensee shall disclose in a clear and conspicuous manner the range of retail prices charged for hearing aids and accessories. The disclosure schedule shall be posted in each licensee’s office and retail establishment in which the licensee works, and a written copy given to each customer, client or patient prior to any sale. Disclosures shall be in the manner set forth by the secretary by rule.

Sec. X 26 V.S.A. § 3284 is amended to read:

Terms of sale; 45-day trial period
(a) All sales contracts for hearing aids equipment sold by licensees to persons in this state, including but not limited to hearing aids, shall contain a clause which requires the hearing aid dispenser to refund the full product price of the hearing aid equipment, except for the cost of earmolds and service, up to 45 days from the date of delivery of any new or substantially refabricated equipment if, in the opinion of the consumer, the equipment is not satisfactory. If the returned equipment is damaged while in the possession of the consumer, the amount refunded shall be reduced by the reasonable amount of the damage. The equipment may not be sold thereafter as new. For purposes of this subsection, "cost of service" means the actual cost of the service provided to fit the hearing aid or install or prepare the equipment, but shall not exceed five percent of the sale price or $50.00, whichever is greater.

(b) The complete terms of the sale, including the terms of the 45-day trial period, the individual prices for goods and services sold and such other information as the director may require shall be disclosed in writing to the consumer before the sale is completed.

(c) If the equipment or a hearing aid is in the possession of the hearing aid dispenser, manufacturer, repairperson, or their agents during the trial period, the period of time the equipment or hearing aid is in such possession shall not be included in the calculation of the 45-day trial period.

Sec. X 26 V.S.A. § 3285 is added to read:

Prohibitions; penalties
(a) No person shall:

(1) practice or attempt to practice audiology or dispense hearing aids or hold oneself out as being permitted to do so in this state unless the person is licensed in accordance with this chapter;

(2) use in connection with the person's name, an insignia or any letters or words which indicate the person is an audiologist or a hearing aid dispenser unless the person is licensed in accordance with this chapter; or

(3) practice audiology or dispense hearing aids after the person's license under this chapter has been suspended or revoked.

(b) A person who violates a provision of this section or who obtains a license by fraud or misrepresentation shall be subject to the pertinent penalties provided in 3 V.S.A. § 127.

Sec. X 26 V.S.A. § 3286 is added to read:

Exemptions

The provisions of section 3284 of this title shall not apply to a person enrolled in a course of study leading to a degree or certificate in audiology at a school accredited by the American Speech-Language Hearing Association, provided:

(a) the activities and services performed constitute part of a supervised course of study;

(b) the person is designated by a title which clearly indicates the person's student or trainee status; and

(c) the person is under the direct supervision of an audiologist licensed in this state.

Sub-Chapter 2: Administration

Sec. X 26 V.S.A. § 3287 is amended to read:

Advisor appointees

(a) The secretary Secretary shall appoint one otolaryngologist, one audiologist, one hearing aid dispenser who is neither an otolaryngologist nor an audiologist, three licensed hearing aid dispensers and one member of the public to serve as advisors in matters related to audiologists and hearing aid dispensers. Of the licensed hearing aid dispensers, one member shall be an otolaryngologist; one shall be an audiologist; and one shall be a hearing aid dispenser who is neither an otolaryngologist nor an audiologist. The public member shall be an individual with significant hearing impairment who uses a hearing aid regularly. The members shall be appointed as set forth in 3 V.S.A. § 129b and shall serve at the pleasure of the secretary Secretary.

(b) The director Director shall seek the advice of the advisors appointed under this section in carrying out the provisions of this chapter. Such members shall be entitled to compensation and necessary expenses in the amount provided in 32 V.S.A. § 1010 for attendance at any meeting called by the director Director for this purpose.
Sec. X 26 V.S.A. § 3288 is amended to read:

Director of the office of professional regulation; duties

The director shall:

1. provide information to applicants for licensure as an audiologist or hearing aid dispenser;
2. administer fees collected under this chapter;
3. explain appeal procedures to licensees and applicants and complaint procedures to the public;
4. receive applications for licensure, grant licensure under this chapter and renew licenses, and deny, revoke, suspend, reinstate, or condition licenses as directed by an administrative law officer;
5. refer all complaints and disciplinary matters to an administrative law officer established under 3 V.S.A. § 129(j);
6. seek with the advice of the hearing aid dispensers who are advisor appointees, before proposing to adopt or amend any rules necessary to implement the provisions under this chapter.

Sub-Chapter 3: Licenses And Examinations

Sec. X 26 V.S.A. § 3289 is added to read:

Eligibility for Audiologist License

1. A master’s degree or equivalent in audiology or speech-language pathology from an educational institution approved by the Director with course work completed in areas specified by rule.
2. Completion of a supervised clinical practicum in audiology, the length and content of which shall be established by rule.
3. Completion of a period, as determined by rule, of postgraduate professional training in audiology as approved by the Director.
4. Passing an examination in audiology approved by the Director, which shall include a section which is equivalent to the hearing aid dispensers examination described in section 3295 of this title. Audiologists who have passed this examination are not required to take the hearing aid dispensers examination required by section 3295.

Sec. X 26 V.S.A § 3291 is amended to read:

License required for Hearing Aid Dispensers

(a) Unless a person is licensed in accordance with the provisions of this chapter, he or she shall not:
(1) dispense or attempt to dispense hearing aids or hold himself or herself out as being able to dispense hearing aids; or

(2) use in connection with his or her name any letters, words, or insignia indicating or implying that he or she is a hearing aid dispenser.

(b) A person who violates a provision of this chapter or who obtains a license by fraud or misrepresentation shall be subject to the penalties provided in 3 V.S.A. § 127(c).

(c) Audiologists licensed pursuant to this chapter may dispense hearing aids consistent with the requirements of this chapter. Licensed audiologists are not required to obtain a separate license to dispense hearing aids.

§ 3292. Construction

(a) Nothing in this chapter shall be construed to prohibit a person from manufacturing hearing aids or making mechanical repairs to hearing aids or from issuing warranties in connection with such manufacturing or repairs.

(b) The licensure requirements of this chapter shall not be construed to apply to any person engaged in hearing aid dispensing as part of the academic curriculum of an accredited institution of higher education, provided that said person is directly supervised by a licensed hearing aid dispenser.

(c) Nothing in this chapter shall be construed to prohibit licensed practitioners from acting within the scope of practice for their licensed field. However, such practitioners shall comply with sections 3282, 3283, and 3284 of this title.

Sec. X 26 V.S.A. § 3293 is amended to read:

Eligibility for Licensure as Hearing Aid Dispenser

To be eligible for licensure under this chapter as a hearing aid dispenser, an applicant shall:

(1) have attained the age of majority; and

(2) pass a written examination administered by the secretary Director under section 3295 of this title.

Sec. X 26 V.S.A. § 3294 is amended to read:

Application for Licensure as Hearing Aid Dispenser

Applications for licensure as a hearing aid dispenser shall be made on a form furnished by the director Director and shall be accompanied by the application and examination fees and evidence of eligibility as requested by the director Director.
Sec. X 26 V.S.A. § 3295 is amended to read:

Examination for Licensure as Hearing Aid Dispenser

(a) If any applications are pending, the Director shall conduct examinations under this chapter at least twice each year. Examinations shall be administered in the manner and places designated by the director.

(b) The examination shall cover the following: the basic physics of sound, anatomy, and physiology of the ear, structure and function of hearing aids, pure tone audiometry, voice and recorded speech audiometry, interpretation of audiograms as related to hearing aid usage, selection and adaptation of hearing aids, counseling people who are hard of hearing in the appropriate use of hearing aids, identifying situations in which referrals to a physician are appropriate, knowledge of medical and rehabilitation facilities for people who are hard of hearing in this State and State and federal laws relating to dispensing hearing aids and other areas of knowledge determined by the director to be necessary.

(c) If the applicant passes the examination and meets the other requirements set forth in this chapter, the applicant shall receive a license upon payment of the license fee.

(d) If an applicant fails the examination, the applicant may retake the examination on one or more occasions upon payment of the examination fee.

(e) The director shall establish by rule fixed criteria for passing the examination that shall apply to all persons taking the examination.

(f) The director may waive the examination requirement if the applicant is a hearing aid dispenser regulated under the laws of another state who is in good standing to dispense hearing aids in that state and, in the opinion of the director, the standards and qualifications required for regulation of hearing aid dispensers in that state are currently at least equal to those required by this chapter.

(g) Licensing standards and procedures shall be fair and reasonable and shall be designed and implemented to measure and reasonably ensure that all applicants are granted licensure if they demonstrate that they possess the minimal occupational qualifications which are consistent with public health, safety, and welfare. They shall not be designed or implemented for the purpose of limiting the number or types of licensees.

Sec. X 26 V.S.A. § 3295a is amended to read:

Temporary licensure of Hearing Aid Dispenser without examination

(a) A temporary license may be issued to a person who applies for the first time to practice as a hearing aid dispenser, under section 3293 of this title, is employed by a licensed hearing aid dispenser and satisfies the provisions of subdivision (1) of that section.

(b) A temporary license allows a person to practice as a hearing aid dispenser while directly supervised by a hearing aid dispenser licensed under section 3295 of this title until he or she takes the next
examination provided by the director Director and a determination is made of his or her qualifications to practice in this state. The supervising hearing aid dispenser shall personally observe the temporary licensee while conducting and interpreting hearing tests and making earmolds or impressions, for a period of two months following issuance of a license under this section or until the license expires, whichever occurs first.

(c) Temporary licenses shall be issued on payment of the specified fee and shall remain in force no longer than 60 days following examination and shall not be extended except for good and exceptional cause shown by the applicant. Not more than one temporary license may be issued to the same person. No extension shall be granted to an applicant who fails the examination.

Sec. X 26 V.S.A. § 3296 is amended to read:

Renewals and Reinstatement for Audiologists and Hearing Aid Dispensers

(a) Licenses shall be renewed every two years upon payment of the renewal fee.

(b) Biennially, the director shall forward a renewal form to each licensee. Upon receipt of the completed renewal form and the renewal fee, the director Director shall issue a new license.

(c) A license which has lapsed for a period of three years or less may be renewed upon application and payment of the renewal fee and the reinstatement fee. The director Director may make such rules as may be reasonably necessary for the protection of the public to assure the director Director that an applicant for reinstatement under this subsection is professionally qualified.

(d) As a condition of renewal, the director Director may require that licensees establish that they have satisfied continuing education requirements established by the director Director, by rule.

Sec. X 26 V.S.A. § 3298 is repealed.

Maintenance of business address; display of license

A licensee shall maintain a Vermont business address, office, and telephone number at which the licensee can normally be reached and shall conspicuously display a copy of the license at each place of business the licensee maintains for dispensing hearing aids.

Sub-Chapter 4: Unprofessional Conduct And Discipline

Sec. X 26 V.S.A § 3301 is amended to read:

Unprofessional conduct of Hearing Aid Dispensers

(a) A licensee shall not engage in unprofessional conduct. When such conduct is committed by an applicant it shall be grounds for denial of a license.

(b) Unprofessional conduct means the following conduct and conduct set forth in 3 V.S.A. § 129a:
(1) aiding or abetting a person, directly or indirectly, to commit unauthorized practice;

(2) giving, offering to give, or causing to be given, directly or indirectly, money or anything of value to any person who advises another in a professional capacity, as an inducement for the professional to influence others to purchase goods or services from the licensee;

(3) making a representation which is intended or has a tendency to deceive the public, including:
   (A) advertising a particular type of hearing aid for sale when such aid is not for sale;
   (B) stating or implying that the use of a hearing aid will retard the progression of a hearing impairment; or
   (C) misrepresenting the licensee or the licensee's business by using the word "audiologist" or similar terms if such designation is not accurate;

(4) engaging in any unfair or deceptive act or practice within the meaning of 9 V.S.A. § 2453 relating to consumer protection;

(5) using undue influence or coercion in connection with the dispensing of hearing aids;

(6) providing or promoting the sale of goods or services to a person who cannot reasonably be expected to benefit from such services or goods;

(7) willfully failing to honor any representation, promise, agreement, or warranty to a consumer;

(8) failing to make available, upon the request of a person using the licensee's services, copies of records or documents in the possession or under the control of the licensee, when those records or documents have been prepared in connection with the furnishing of services or goods to the requesting person;

(9) any of the following except when reasonably undertaken in an emergency situation in order to protect life or health:
   (A) practicing or offering to practice beyond the scope permitted by law;
   (B) accepting and performing occupational responsibilities which the licensee knows or has reason to know the licensee is not competent to perform; or
   (C) performing occupational services which have not been authorized by the consumer or his or her legal representative;

(10) discouraging consumers in any way from exercising their right to a refund within a 45-day trial period, unreasonably delaying payment of such refunds as may be due, or deducting amounts from refunds beyond those allowed by law;

(11) failing to inform a consumer prior to sale that a medical evaluation of hearing loss prior to purchasing a hearing aid is in the consumer's best health interest;

(12) engaging in fraud in connection with any state or federally assisted medical assistance programs.

(c) After hearing, and upon a finding of unprofessional conduct, an administrative law officer may direct the director to take disciplinary action against a licensed hearing aid dispenser or applicant.
Sec. X 26 V.S.A. § 3302 is added to read:

Unprofessional conduct of Audiologists

(a) A licensee or applicant shall not engage in unprofessional conduct.

(b) Unprofessional conduct means the following conduct and the conduct set forth in 3 V.S.A. § 129a:

(1) Willfully making or filing false reports or records in the practice of audiology, willfully impeding or obstructing the proper making or filing of reports or records, or willfully failing to file the proper report or record;

(2) Aiding or abetting a person, directly or indirectly, to commit an unauthorized practice;

(3) Giving, offering to give, or causing to be given, directly or indirectly, money or anything of value to any person who advises another in a professional capacity, as an inducement for the professional to influence others to purchase goods or services from the licensee;

(4) Advertising or making a representation which is intended or has a tendency to deceive the public, including:

(A) advertising a particular type of service, equipment, or hearing aid when the particular service, equipment, or hearing aid is not available;

(B) stating or implying that the use of a hearing aid will retard the progression of a hearing impairment;

(C) advertising or making any statement related to the practice of audiology which is intended to or tends to deceive or mislead the public;

(D) using or promoting or causing the use of any misleading, deceiving, improbable, or untruthful advertising matter, promotional literature, testimonial guarantee, warranty, label, brand, insignia, or any other representation;

(5) Engaging in any unfair or deceptive act or practice within the meaning of 9 V.S.A. § 2453, relating to consumer protection;

(6) Willfully failing to honor any representation, promise, agreement, or warranty to a client or consumer;

(7) Professional negligence or malpractice;

(8) Any of the following, except when reasonably undertaken in an emergency situation in order to protect life or health:

(A) practicing or offering to practice beyond the scope permitted by law;

(B) accepting and performing professional or occupational responsibilities which the licensee knows or has reason to know the licensee is not competent to perform; or

(C) performing professional or occupational services which have not been authorized by the consumer or his or her legal representative:
(9) Failing to make available, upon request of a person using the licensee's services, copies of records or documents in the possession or under the control of the licensee, when those records or documents have been prepared in connection with the furnishing of services or goods to the requesting persons;

(10) Sexual harassment of a patient or client;

(11) Engaging in a sexual act as defined in 13 V.S.A. § 3251 with a patient;

(12) Conviction of a crime related to the practice of audiology or conviction of a felony, whether or not related to the practice of the profession;

(13) Discouraging clients or consumers in any way from exercising their right to a refund within a 45-day trial period, unreasonably delaying payment of such refunds as may be due, or deducting amounts from refunds beyond those allowed by law;

(14) Failing to inform a consumer prior to sale of a hearing aid that a medical evaluation of hearing loss prior to purchasing a hearing aid is in the consumer's best health interest;

(15) Engaging in fraud in connection with any state or federally-assisted medical assistance programs; or

(16) Violating any part of the Code of Ethics of the American Speech-Language-Hearing Association or the American Academy of Audiology.

Sec. X Transitional Provisions

(a) As of the September 1, 2015, all Audiologists currently licensed and in good standing with the Agency of Education shall be deemed licensed by the Secretary of State’s Office of Professional Regulation. The Office of Professional Regulation shall re-issue licenses at no charge after that date and shall establish a single expiration and renewal date for all of these licensees.

(b) Audiologists employed in schools and holding an endorsement from the Agency of Education shall retain that endorsement and shall renew it with the Agency as required by law, in addition to licensure with the Office of Professional Regulation.

Sec. X. Effective Dates

This act shall take effect on...