

COMMITTEE REPORT

TO: Patrick O'Donnell
Clerk of the Legislature

FROM: Senator Sara Howard
Chair, Health and Human Services Committee

DATE: 11.13.2020

RE: Health and Human Services Committee Report and Recommendations on
Regulated Occupations within Committee Jurisdiction – Hearing Instrument
Specialist

GENERAL INFORMATION

- I. Occupation Regulated
 - A) Hearing Instrument Specialist

- II. Name of Occupational Board Responsible for Enforcement
 - A) Per Nebraska Revised Statutes Section [38-161](#), the Board of Hearing Instrument Specialists provides recommendations to the Department of Health and Human Services regarding the issuance or denial of credentials, and provides recommendations to the Department of Health and Human Services regarding rules and regulations to carry out the Uniform Credentialing Act.

- III. Public Purpose and Assumptions Underlying License Creation
 - A) A Hearing Instrument Specialist, at the request of a Physician or a member of related professions, may make audiograms for the professional's use in consultation with the hard-of-hearing. A Hearing Instrument Specialist may also make impressions for earmolds. The license was created to protect the health, safety, and welfare of the hard of hearing.

- IV. Number of Regulated Professionals in Nebraska
 - A) There are 111 licensed Hearing Instrument Specialists in Nebraska.

BOARD MEMBERSHIPS AND MEETINGS

- I. Number of Members
 - A) There are six members of the Board of Hearing Instrument Specialists

II. Who Appoints Members of the Board / Is Legislative Approval Required?

- A) The Board of Health appoints the members of the Board of Hearing Instrument Specialists. Legislative approval is not required.

III. Term Length

- A) The length of term for service on the Board of Hearing Instrument Specialists is up to two consecutive five year terms, on a rotating basis.

IV. Qualifications for Membership of the Board

- A) The Board of Hearing Instrument Specialists is made up of five professional members and one public member. The professional members shall have held and maintained an active credential and have been actively engaged in the practice of his or her profession for a period of five years just preceding his or her appointment and shall maintain such credential and practice while serving as a board member. The professional members shall consist of three licensed hearing instrument specialists, at least one of whom does not hold a license as an audiologist, one otolaryngologist, and one audiologist.

V. The Number of Meetings Required Per Year / Meetings Actually Held

- A) For fiscal year (FY) 2014-2015: Meetings Required – 1; Meetings Held – 3.
- B) For FY 2015-2016: Meetings Required – 1; Meetings Held – 4.
- C) For FY 2016-2017: Meetings Required – 1; Meetings Held – 3.
- D) For FY 2017-2018: Meetings Required – 1; Meetings Held – 3.
- E) For FY 2018-2019: Meetings Required – 1; Meetings Held – 3.

VI. Annual Budget Information for the Previous Five Years

- A) The Board of Hearing Instrument Specialists is cash-funded from licensure fees. Funds for credentialed occupations may come from interest earned on the Professional and Occupational Credentialing Cash Fund, certification and verification of credentials, administrative fees, reinstatement fees, general funds and federal funds, fees for miscellaneous services, gifts, and grants.
- B) For FY 2014-2015: \$8,209
- C) For FY 2015-2016: \$5,448
- D) For FY 2016-2017: \$10,800
- E) For FY 2017-2018: \$6,862
- F) For FY 2018-2019: \$134,29

VII. Statement from Occupational Board on Effectiveness of Regulations

- A) The chair of the Board of Hearing Instrument Specialists stated “the regulations were very effective. The regulations have shaped the profession for approximately 50 years, and they have always been the basis for new licensees coming into the profession and a stable referral point for licensees with questions or disciplinary issues.”

AUTHORIZATION

I. Statutory Authorization

- A) Statutory authorization for the Hearing Instrument Specialist occupation may be found in the Nebraska Revised Statutes, sections [38-1501](#) to [38-1518](#), which may be cited as the Hearing Instrument Specialists Practice Act. For text of the Nebraska statutes relating to the Hearing Instrument Specialist occupation, see Appendix A.

II. Other Authorization

- A) Rules and regulations regarding the practice of Hearing Instrument Specialists may be found in the Nebraska Administrative Code [Title 172, Chapter 75](#).

CREDENTIALING

I. Number of Licenses, Certifications, or Registrations Issued In Past Five Years

- A) There were 85 Hearing Instrument Specialist and temporary Hearing Instrument Specialist licenses issued in the past five years.

II. Number of Licenses, Certifications, or Registrations Denied in Past Five Years

- A) There were 12 Hearing Instrument Specialist or temporary Hearing Instrument Specialist licenses denied in the past five years.
- B) Grounds for denial include misrepresentation of material facts, failure to complete required examinations, failure to provide licensure fees, and immoral or dishonorable conduct, amongst other grounds.

III. Number of Licenses, Certifications, or Registrations Revoked in Past Five Years

- A) There were no Hearing Instrument Specialist licenses revoked in the past five years.

IV. Number of Licenses, Certifications, or Registrations Penalized in Past Five Years

- A) There were no Hearing Instrument Specialists licenses penalized in the past five years.

V. Comparison of How Other States Regulate This Occupation

- A) All states require some sort of licensure for the dispensation of hearing instruments. All states have educational and examination requirements to operate as a Hearing Instrument Specialist.

VI. What Is The Potential Harm if This Occupation Is No Longer Licensed, Certified, or Regulated?

- A) If the Hearing Instrument Specialist occupation is no longer licensed, there would be no consumer protection against fraud, and there would be no standards. Unlicensed individuals supplying hearing instruments would not be required to have the necessary training and experience to ensure the hearing instruments operate at levels that will not further damage the hearing of the wearer. Audiologists may still be able to prescribe and provide hearing aids, but the cost of scheduling an audiology appointment to do so for every adjustment would be prohibitive.

COMMITTEE RECOMMENDATION ON CONTINUATION, MODIFICATION, OR TERMINATION OF OCCUPATIONAL REGULATIONS

Regulated occupations under the purview of the Health and Human Services Committee are unique in that through the Nebraska Regulation of Health Professions Act (Neb. Rev. Stat. Sections 71-6201 to 71-6229), health professions which are not licensed or regulated, or health professions that wish to change their scope of practice, go through a three-stage credentialing process.

Credentialing review is a three-stage process conducted by the following review bodies in the following order:

- 1) The review of an ad hoc technical review committee appointed by the Director of the Division of Public Health;
- 2) The review of the State Board of Health;
- 3) The review of the Director of the Division of Public Health.

The three review bodies each create their own independent report on each proposal. All reports created by the review process are available to members of the Health and Human Services Committee to assist them during their review of any bills that might arise from credentialing review proposals. These reports include recommendations regarding the level of licensure of the health profession. These reports are advisory to the Legislature, and only the action of the Legislature may create changes in the regulatory status of a profession. These reports represent expert input into possible public health and safety aspects of credentialing review proposals,

and the nine-month process is overseen by those with experience in the provision of health-related or medical services.

The licenses, certifications, and registrations overseen by the Board of Hearing Instrument Specialists and the Department of Health and Human Services are intended to protect the health, safety, and welfare of Nebraskans. The current regulation of the Hearing Instrument Specialist occupation by licensure is appropriate and balanced and does not need modification at this time.

APPENDIX A

STATUTES PERTAINING TO HEARING INSTRUMENT SPECIALISTS PRACTICE ACT

38-1501. Act, how cited.

Sections 38-1501 to 38-1518 shall be known and may be cited as the Hearing Instrument Specialists Practice Act.
Source: Laws 2007, LB463, § 565; Laws 2009, LB195, § 19.

38-1502. Definitions, where found.

For purposes of the Hearing Instrument Specialists Practice Act and elsewhere in the Uniform Credentialing Act, unless the context otherwise requires, the definitions found in sections 38-1503 to 38-1507 apply.

Source: Laws 1969, c. 767, § 1, p. 2903; Laws 1986, LB 701, § 1; Laws 1987, LB 473, § 50; Laws 1988, LB 1100, § 148; Laws 1996, LB 1044, § 681; R.S.1943, (2003), § 71-4701; Laws 2007, LB296, § 589; Laws 2007, LB463, § 566; Laws 2009, LB195, § 20.

38-1503. Board, defined.

Board means the Board of Hearing Instrument Specialists.

Source: Laws 2007, LB463, § 567; Laws 2009, LB195, § 21.

38-1504. Hearing instrument, defined.

Hearing instrument 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 earmold, but excluding batteries and cords.

Source: Laws 2007, LB463, § 568; Laws 2009, LB195, § 22.

38-1505. Practice of fitting hearing instruments, defined.

Practice of fitting hearing instruments means the measurement of human hearing by means of an audiometer or by other means approved by the board solely for the purpose of making selections, adaptations, or sale of hearing instruments. The term also includes the making of impressions for earmolds. A dispenser, at the request of a physician or a member of related professions, may make audiograms for the professional's use in consultation with the hard-of-hearing.

Source: Laws 2007, LB463, § 569; Laws 2009, LB195, § 23.

38-1506. Sell, sale, or dispense, defined.

Sell, sale, or dispense means any transfer of title or of the right to use by lease, bailment, or any other contract, excluding (1) wholesale transactions with distributors or dispensers and (2) distribution of hearing instruments by nonprofit service organizations at no cost to the recipient for the hearing instrument.

Source: Laws 2007, LB463, § 570; Laws 2009, LB195, § 24.

38-1507. Temporary training license, defined.

Temporary training license means a hearing instrument specialist license issued while the applicant is in training to become a licensed hearing instrument specialist.

Source: Laws 2007, LB463, § 571; Laws 2009, LB195, § 25; Laws 2017, LB88, § 52.

Operative Date: April 26, 2017

38-1508. Board membership; qualifications.

The board shall consist of five professional members and one public member appointed pursuant to section 38-158. The members shall meet the requirements of sections 38-164 and 38-165. The professional members shall consist of three licensed hearing instrument specialists, one otolaryngologist, and one audiologist until one licensed hearing instrument specialist vacates his or her office or his or her term expires, whichever occurs first, at which time the professional members of the board shall consist of three licensed hearing instrument specialists, at least one of whom does not hold a license as an audiologist, one otolaryngologist, and one audiologist. At the expiration of the four-year terms of the members serving on December 1, 2008, successors shall be appointed for five-year terms.

Source: Laws 1969, c. 767, § 15, p. 2914; Laws 1981, LB 204, § 130; Laws 1986, LB 701, § 12; Laws 1988, LB 1100, § 160; Laws 1992, LB 1019, § 81; Laws 1993, LB 375, § 6; Laws 1994, LB 1223, § 52; Laws 1999, LB 828, § 173; R.S.1943, (2003), § 71-4715; Laws 2007, LB463, § 572; Laws 2009, LB195, § 26.

38-1509. Sale or fitting of hearing instruments; license required; exception.

(1) Except as otherwise provided in this section, no person shall engage in the sale of or practice of fitting hearing instruments or display a sign or in any other way advertise or represent himself or herself as a person who practices the fitting and sale or dispensing of hearing instruments unless he or she holds an unsuspended, unrevoked hearing instrument specialist license issued by the department as provided in the Hearing Instrument Specialists Practice Act. A hearing instrument specialist license shall confer upon the holder the right to select, fit, and sell hearing instruments. A person holding a license issued under the act prior to August 30, 2009, may continue to practice under such license until it expires under the terms of the license.

(2) A licensed audiologist who maintains a practice pursuant to licensure as an audiologist in which hearing instruments are regularly dispensed or who intends to maintain such a practice shall be exempt from the requirement to be licensed as a hearing instrument specialist.

(3) Nothing in the act shall prohibit a corporation, partnership, limited liability company, trust, association, or other like organization maintaining an established business address from engaging in the business of selling or offering for sale hearing instruments at retail without a license if it employs only properly licensed natural persons in the direct sale and fitting of such products.

(4) Nothing in the act shall prohibit the holder of a hearing instrument specialist license from the fitting and sale of wearable instruments or devices designed for or offered for the purpose of conservation or protection of hearing.

Source: Laws 1969, c. 767, § 2, p. 2904; Laws 1986, LB 701, § 2; Laws 1988, LB 1100, § 149; Laws 1992, LB 1019, § 79; Laws 1993, LB 121, § 438; R.S.1943, (2003), § 71-4702; Laws 2007, LB247, § 52; Laws 2007, LB247, § 70; Laws 2007, LB463, § 573; Laws 2009, LB195, § 27; Laws 2017, LB88, § 53.

Operative Date: August 24, 2017

38-1510. Applicability of act.

(1) The Hearing Instrument Specialists Practice Act is not intended to prevent any person from engaging in the practice of measuring human hearing for the purpose of selection of hearing instruments if such person or organization employing such person does not sell hearing instruments or the accessories thereto.

(2) The act shall not apply to a person who is a physician licensed to practice in this state, except that such physician shall not delegate the authority to fit and dispense hearing instruments unless the person to whom the authority is delegated is licensed as a hearing instrument specialist under the act.

Source: Laws 1969, c. 767, § 4, p. 2905; Laws 1986, LB 701, § 4; Laws 1988, LB 1100, § 150; R.S.1943, (2003), § 71-4704; Laws 2007, LB463, § 574; Laws 2009, LB195, § 28.

38-1511. Sale; conditions.

(1) Any person who practices the fitting and sale of hearing instruments shall deliver to each person supplied with a hearing instrument a receipt which shall contain the licensee's signature and show his or her business address and the number of his or her certificate, together with specifications as to the make and model of the hearing instrument furnished, and clearly stating the full terms of sale. If a hearing instrument 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.

(2) Such 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 or her relationship with the hearing instrument specialist that any examination or representation made by a licensed hearing instrument specialist in connection with the fitting and selling of this hearing instrument is not an examination, diagnosis, or prescription by a person licensed to practice medicine in this state and therefor must not be regarded as medical opinion or advice.

Source: Laws 1969, c. 767, § 3, p. 2905; Laws 1986, LB 701, § 3; R.S.1943, (2003), § 71-4703; Laws 2007, LB463, § 575; Laws 2009, LB195, § 29.

38-1512. License; examination; conditions.

(1) Any person may obtain a hearing instrument specialist license under the Hearing Instrument Specialists Practice Act by successfully passing a qualifying examination if the applicant:

- (a) Is at least twenty-one years of age; and
- (b) Has an education equivalent to a four-year course in an accredited high school.

(2) The qualifying examination shall consist of written and practical tests. The examination shall not be conducted in such a manner that college training is required in order to pass. Nothing in this examination shall imply that the applicant is required to possess the degree of medical competence normally expected of physicians.

(3) The department shall give examinations approved by the board. A minimum of two examinations shall be offered each calendar year.

Source: Laws 1969, c. 767, § 7, p. 2907; Laws 1986, LB 701, § 6; Laws 1987, LB 473, § 53; Laws 1988, LB 1100, § 153; R.S.1943, (2003), § 71-4707; Laws 2007, LB247, § 53; Laws 2007, LB247, § 71; Laws 2007, LB463, § 576; Laws 2009, LB195, § 30; Laws 2017, LB88, § 54.

Operative Date: August 24, 2017

38-1513. Temporary training license; issuance; supervision; renewal.

(1) The department, with the recommendation of the board, shall issue a temporary training license to any person who has met the requirements for licensure as a hearing instrument specialist pursuant to subsection (1) of section 38-1512. Previous experience or a waiting period shall not be required to obtain a temporary training license.

(2) Any person who desires a temporary training license shall make application to the department. The temporary training license shall be issued for a period of one year. A person holding a valid license as a hearing instrument specialist shall be responsible for the supervision and training of such applicant and shall maintain adequate personal contact with him or her.

(3) If a person who holds a temporary training license under this section has not successfully passed the licensing examination within twelve months of the date of issuance of the temporary training license, the temporary training license may be renewed or reissued for a twelve-month period. In no case may a temporary training license be renewed or reissued more than once. A renewal or reissuance may take place any time after the expiration of the first twelve-month period.

Source: Laws 1969, c. 767, § 8, p. 2907; Laws 1973, LB 515, § 22; Laws 1986, LB 701, § 7; Laws 1987, LB 473, § 55; Laws 1988, LB 1100, § 154; Laws 1991, LB 456, § 36; Laws 1997, LB 752, § 185; Laws 2003, LB 242, § 125; R.S.1943, (2003), § 71-4708; Laws 2007, LB463, § 577; Laws 2009, LB195, § 31; Laws 2017, LB88, § 55.

Operative Date: April 26, 2017

38-1514. Qualifying examination; contents; purpose.

The qualifying examination provided in section 38-1512 shall be designed to demonstrate the applicant's adequate technical qualifications by:

(1) Tests of knowledge in the following areas as they pertain to the fitting and sale of hearing instruments

- (a) Basic physics of sound;
- (b) The anatomy and physiology of the ear; and
- (c) The function of hearing instruments; and

(2) Practical tests of proficiency in the following techniques as they pertain to the fitting of hearing instruments:

- (a) Pure tone audiometry, including air conduction testing and bone conduction testing;
- (b) Live voice or recorded voice speech audiometry;
- (c) Masking when indicated;
- (d) Recording and evaluation of audiograms and speech audiometry to determine proper selection and adaptation of a hearing instrument; and
- (e) Taking earmold impressions.

Source: Laws 1969, c. 767, § 9, p. 2908; Laws 1986, LB 701, § 8; R.S.1943, (2003), § 71-4709; Laws 2007, LB463, § 578; Laws 2009, LB195, § 32.

38-1515. Applicant for licensure; continuing competency requirements.

An applicant for licensure as a hearing instrument specialist who has met the education and examination requirements in section 38-1512, who passed the examination more than three years prior to the time of application for licensure, and who is not practicing at the time of application for licensure shall present proof satisfactory to the department that he or she has within the three years immediately preceding the application for licensure completed continuing competency requirements approved by the board pursuant to section 38-145.

Source: Laws 2007, LB463, § 579; Laws 2009, LB195, § 33.

38-1516. Applicant for licensure; reciprocity; continuing competency requirements; military spouse; temporary license.

(1) An applicant for licensure as a hearing instrument specialist who has met the standards set by the board pursuant to section 38-126 for a license based on licensure in another jurisdiction but is not practicing at the time of application for licensure shall present proof satisfactory to the department that he or she has within the three years immediately preceding the application for licensure completed continuing competency requirements approved by the board pursuant to section 38-145.

(2) An applicant who is a military spouse may apply for a temporary license as provided in section 38-129.01.

Source: Laws 2007, LB463, § 580; Laws 2009, LB195, § 34; Laws 2017, LB88, § 56.

Operative Date: April 26, 2017

38-1517. Licensee; disciplinary action; additional grounds.

In addition to the grounds for disciplinary action found in sections 38-178 and 38-179, a credential issued under the Hearing Instrument Specialists Practice Act may be denied, refused renewal, limited, revoked, or suspended or have other disciplinary measures taken against it in accordance with section 38-196 when the applicant or credential holder is found guilty of any of the following acts or offenses:

(1) Fitting and selling a hearing instrument to a child under the age of sixteen who has not been examined and cleared for hearing instrument use within a six-month period by an otolaryngologist without a signed waiver by the legal guardian. This subdivision shall not apply to the replacement with an identical model of any hearing instrument within one year of its purchase;

(2) Any other condition or acts which violate the Trade Practice Rules for the Hearing Aid Industry of the Federal Trade Commission or the Food and Drug Administration; or

(3) Violation of any provision of the Hearing Instrument Specialists Practice Act.

Source: Laws 1969, c. 767, § 12, p. 2909; Laws 1986, LB 701, § 10; Laws 1988, LB 1100, § 157; Laws 1991, LB 456, § 37; Laws 1994, LB 1223, § 51; R.S.1943, (2003), § 71-4712; Laws 2007, LB463, § 581; Laws 2009, LB195, § 35.

38-1518. Fees.

The department shall establish and collect fees for credentialing activities under the Hearing Instrument Specialists Practice Act as provided in sections 38-151 to 38-157.

Source: Laws 1988, LB 1100, § 159; Laws 1992, LB 1019, § 80; Laws 2003, LB 242, § 127; R.S.1943, (2003), § 71-4714.01; Laws 2007, LB463, § 582; Laws 2009, LB195, § 36.

71-4701. Transferred to section 38-1502.

71-4702. Transferred to section 38-1509.

71-4702.01. Repealed. Laws 2007, LB 463, § 1319.

71-4703. Transferred to section 38-1511.

71-4704. Transferred to section 38-1510.

71-4705. Repealed. Laws 1986, LB 701, §13.

71-4706. Repealed. Laws 2007, LB 463, § 1319.

71-4707. Transferred to section 38-1512.

71-4708. Transferred to section 38-1513.

71-4709. Transferred to section 38-1514.

71-4709.01. Repealed. Laws 2007, LB 463, § 1319.

71-4710. Repealed. Laws 2007, LB 463, § 1319.

71-4711. Repealed. Laws 2007, LB 463, § 1319.

71-4712. Transferred to section 38-1517.

71-4713. Repealed. Laws 1988, LB 1100, §185.

71-4714. Repealed. Laws 2007, LB 463, § 1319.

71-4714.01. Transferred to section 38-1518.

71-4715. Transferred to section 38-1508.

71-4715.01. Repealed. Laws 2007, LB 463, § 1319.

71-4716. Repealed. Laws 2007, LB 463, § 1319.

71-4717. Repealed. Laws 2007, LB 463, § 1319.

71-4718. Repealed. Laws 2003, LB 242, s. 154.

71-4719. Repealed. Laws 2007, LB 463, § 1319.