

# DEPARTMENT OF REGULATORY AGENCIES

## Audiology and Hearing Aid Provider Licensure Rules & Regulations

### 3 CCR 711-1 Effective September 1, 2010

#### **AUTHORITY**

**Basis:** These rules are promulgated and adopted by the Director of Registrations pursuant to Sections 12-5.5-106(5) and 12-5.5-206(4), C. R. S.

#### **Purpose**

These rules are adopted to implement the Director's authority to license persons as audiologists or hearing aid providers and to set forth the requirements for being so licensed.

#### **Rule 1 - Customer Records**

The purpose of this rule is to identify the requirements for maintaining customer records by individuals licensed pursuant to Part I and Part II of the Audiologists and Hearing Aid Providers Act, 12-5.5-101, *et.seq.* pursuant to Sections 12-5.5-106(5) and 12-5.5-206(4) (b), C.R.S.

The licensee or licensee's supervisor or licensee designated by licensee's employer shall maintain all customer records for at least seven years. These records shall identify customer's name, the goods and services provided to each customer (excluding minor accessories and batteries), and the date and price of each transaction.

#### **Rule 2 - Malpractice Insurance for Audiologists**

The purpose of the following rule is to establish the amount of malpractice coverage that must be maintained by an audiologist who provides services to patients as required by Sections 12-5.5-106(4), and 12-5.5-102(3)(e), C.R.S.:

An audiologist shall maintain malpractice coverage of at least of \$1,000,000 per incident and \$3,000,000 aggregate per year.

#### **Rule 3 - Hearing Aid Provider Trainees and Associates**

The purpose of this rule is to establish the time period during which a trainee and associate license shall be valid, and to specify the components of the training required to be completed by trainees and associates pursuant to Section 12-5.5-202.5(4), C.R.S.

- A. A "hearing aid provider trainee" is defined as an individual who has not completed 300 documented hours of training with a licensed hearing aid provider or licensed audiologist in the state of Colorado.

- B. A “hearing aid provider associate” is defined as an individual who has completed a minimum of 300 hours of on-site supervised practice with a licensed hearing aid provider or licensed audiologist in Colorado and is reported as being competent to the Office of Audiology and Hearing Aid Provider Licensure by a licensed audiologist or hearing aid provider who directly supervised the associate.
- C. Before a hearing aid provider trainee can become a hearing aid provider associate, the hearing aid provider trainee must complete 300 hours of supervised training in the following:
1. Taking a case history and review;
  2. Otoscopy;
  3. Testing of hearing including air conduction and bone conduction with proper masking when needed;
  4. Testing of speech including SRT, MCL, UCL, and discrimination with proper masking when needed;
  5. Interpreting hearing tests and the making of medical referrals as necessary;
  6. Taking of ear impressions suitable for hearing aids and ear molds;
  7. Fitting and post-fitting counseling including the delivery of the hearing aid, insertion and removal of the hearing aid, instruction on changing the batteries, and education to the user and family as to expectations and performance;
  8. Checking for proper fit and making needed adjustments; and
  9. Verifying the hearing aid performance to determine if the hearing aid is correcting and conforming to the hearing loss as expected. This may include, but is not limited to, the use of real ear measurement, word discrimination, aided versus unaided, or other forms of aided measurements as may be standard in the industry.
- D. A hearing aid provider trainee must be supervised at all times while learning and performing the tasks identified in paragraph C above. At no time shall a hearing aid trainee perform any of the activities in paragraph C without the on-site, direct supervision of a licensed audiologist or hearing aid provider. A trainee may apply for multiple supervisors by filling out a form provided by the Office.
- E. A hearing aid provider associate can only become a licensed hearing aid provider upon successful completion and passage of the National Competency Examination of the National Board of Certification in Hearing Instrument Sciences. Until such completion of the examination, a hearing aid provider associate may independently engage in the activities described in paragraph C above. However, all hearing aid sales must be reviewed by a licensed

audiologist or hearing aid provider and all contracts need to be signed by the licensed audiologist or hearing aid provider.

- F. No person may practice as a trainee prior to being issued a hearing aid trainee license by the Office of Audiology and Hearing Aid Providers Licensure. Any work prior to the issuance of a trainee license will not apply as training hours towards the trainee license status.
- G. An individual may remain in trainee or associate status for no longer than three years from date of issuance of the trainee license or 60 days after notification of successful completion of the National Board for Certification-Hearing Instrument Science (“NBCHIS”) examination, whichever comes first.

#### **Rule 4 - Written Disclosures to Purchasers**

The purpose of this rule is specify the type of written disclosures to be provided to purchasers of hearing aids pursuant to Sections 12-5.5-206(4)(a), and 206(5), C.R.S. that will protect such purchasers and that are necessary for the enforcement and administration of the Audiology and Hearing Aid Providers Act.

- A. The licensee shall identify themselves by listing their name, license type (i.e., audiologist or hearing aid provider), license number, business address and telephone number on every contract or purchase agreement for the sale of a hearing aid.
- B. Licensees shall include provisions on all contracts and purchase agreements stating the following:
  - 1. Hearing aid providers and audiologists are regulated by the Division of Registrations.
  - 2. Any complaints can be filed against the Licensee with the Office of Audiology and Hearing Aid Provider Licensure within the Division of Registrations.
  - 3. The Office of Audiology and Hearing Aid Provider Licensure’s website, address, and telephone number.
- C. If any part of the purchase price of a hearing aid, including any fees for services, is to be non-refundable, the following disclosures of all non-refundable charges are required on the contract or purchases agreement and must be clearly stated as non-refundable:
  - 1. An itemized list of the minimum actual cost of the materials used and any manufacturer’s return fees. The total of these charges may not exceed 5% of the hearing aid purchase price.
  - 2. A separate line item clearly stated as non-refundable, the total cost of all non-refundable charges related to the purchase of the hearing aids that are not included in the purchase price of the hearing aids such as: ear molds, fitting and consultation fees, rehabilitation services and/or non-refundable accessories or parts.

3. A provision that clearly identifies all professional services including, but not limited to, those listed in subsection 2 above, and the exact charge for each service.
4. A statement that clearly identifies all of the costs of materials used that are subject to the 5% retainer of costs.
5. The manufacturer's return fee.

#### **Rule 5 - Declaratory Orders**

The purpose of this rule is to establish procedures for the handling of requests for declaratory orders filed pursuant to the Colorado Administrative Procedures Act at Section 24-4-105(11), C.R.S.

- A. Any person or entity may petition the Director for a declaratory order to terminate controversies or remove uncertainties as to the applicability of any statutory provision or of any rule or order of the Director.
- B. The Director will determine, at her discretion and without notice to petitioner, whether to rule upon any such petition. If the Director determines that she will not rule upon such a petition, the Director shall promptly notify the petitioner of her action and state the reasons for such decision.
- C. In determining whether to rule upon a petition filed pursuant to this rule, the Director will consider the following matters, among others:
  1. Whether a ruling on the petition will terminate a controversy or remove uncertainties as to the applicability to petitioner of any statutory provisions or rule or order of the Director.
  2. Whether the petition involves any subject, question or issue that is the subject of a formal or informal matter or investigation currently pending before the Director or a court involving one or more petitioners.
  3. Whether the petition involves any subject, question or issue that is the subject of a formal or informal matter or investigation currently pending before the Director or a court but not involving any petitioner.
  4. Whether the petition seeks a ruling on a moot or hypothetical question or will result in an advisory ruling or opinion.
  5. Whether the petitioner has some other adequate legal remedy, other than an action for declaratory relief pursuant to CRCP 57, which will terminate the controversy or remove any uncertainty as to the applicability to the petitioner of the statute, rule or order in question.
- D. Any petition filed pursuant to this rule shall set forth the following:

1. The name and address of the petitioner and whether the petitioner is licensed pursuant to Title 12, Article 5.5.
  2. The statute, rule or order to which the petition relates.
  3. A concise statement of all of the facts necessary to show the nature of the controversy or uncertainty and the manner in which the statute, rule, or order in question applies or potentially applies to the petitioner.
- E. If the Director determines that she will rule on the petition, the following procedures shall apply:
1. The Director may rule upon the petition based solely upon the facts presented in the petition. In such a case:
    - a. Any ruling of the Director will apply only to the extent of the facts presented in the petition and any amendment to the petition.
    - b. The Director may order the petitioner to file a written brief, memorandum or statement of position.
    - c. The Director may set the petition, upon due notice to petitioner, for a non-evidentiary hearing.
    - d. The Director may dispose of the petition on the sole basis of the matters set forth in the petition.
    - e. The Director may request the petitioner to submit additional facts in writing. In such event, such additional facts will be considered as an amendment to the petition.
    - f. The Director may take administrative notice of facts pursuant to the Administrative Procedure Act at Section 24-4-105(8), C.R.S., and may utilize her experience, technical competence, and specialized knowledge in the disposition of the petition.
  2. If the Director rules upon the petition without a hearing, she shall promptly notify the petitioner of her decision.
  3. The Director may, at her discretion, set the petition for hearing, upon due notice to petitioner, for the purpose of obtaining additional facts or information or to determine the truth of any facts set forth in the petition or to hear oral argument on the petition. The notice to the petitioner shall set forth, to the extent known, the factual or other matters into which the Director intends to inquire. For the purpose of such a hearing, to the extent necessary, the petitioner shall have the burden of proving all the facts stated in the petition; all of the facts necessary to show the nature of the

controversy or uncertainty; and the manner in which the statute, rule, or order in question applies or potentially applies to the petitioner and any other facts the petitioner desires the Director to consider.

- F. The parties to any proceeding pursuant to this rule shall be the Director and the petitioner. Any other person may seek leave of the Director to intervene in such a proceeding, and leave to intervene will be granted at the sole discretion of the Director. A petition to intervene shall set forth the same matters as are required by Section D of this Rule. Any reference to a “petitioner” in this Rule also refers to any person who has been granted leave to intervene by the Director.
- G. Any declaratory order or other order disposing of a petition pursuant to this Rule shall constitute an agency action subject to judicial review pursuant to the Colorado Administrative Procedures Act at Section 24-4-106, C.R.S.

### **Rule 6 – Requirement for Reinstatement**

The purpose of this rule is to state the requirements for reinstatement of an audiologist or hearing aid provider license that has expired pursuant to Sections 12-5.5-103 and 12-5.5-203, C.R.S.

- A. A licensee applying for reinstatement of an expired license shall complete a reinstatement application, pay a reinstatement fee, and attest to the appropriate bond or insurance coverage as required by statute.
- B. If the license has been expired for more than two years from the date of receipt of the reinstatement application, a licensee applying for reinstatement of an expired license shall establish “competency to practice” under Sections 24-34-102(8)(d)(II)(A) and (D) and, 24-34-105, C.R.S. as follows:
  - 1. Verification of licensure in good standing from another state along with verification of active practice in that state for two years of the previous five years from the date of application for reinstatement; OR
  - 2. Completion of 30 hours of continuing education courses related to the practice of audiology or hearing aid providers during the two years immediately preceding the application for reinstatement. The continuing education must meet the approval of the Director; OR
  - 3. Supervised practice for a period of no less than six months subject to the terms established by the Director; OR
  - 4. With regard to Hearing Aid Provider licensees only, retaking and achieving a passing score on the NBCHIS accredited examination within two years immediately preceding submission of an application for reinstatement; OR
  - 5. Maintained active Board certification with NBCHIS; OR

6. By any other means approved by the Director.
- C. An applicant seeking to reinstate a license that has been expired for more than five years is not eligible to complete B(2) of this rule.

### **Rule 7 – Reporting Convictions and Other Adverse Actions**

The purpose of this rule is to clarify the procedures for reporting convictions and other adverse actions to include judgments and administrative proceedings pursuant to Section 12-5.5-102, 12-5.5-102.5, 12-5.5-105(1)(b)(II), (IX), 12-5.5-105(2), 12-5.5-106(5), 12-5.5-202(2), 12-5.5-202(2)(b)(IV), 12-5.5-205(1)(b)(VII), (X), (XII), 12-5.5-205(2) and 12-5.5-206(4), C.R.S.A Licensee, as defined in Sections 12-5.5-101 and 201, C.R.S. including those licensed pursuant to Sections 12-5.5-202.5 and 102.5, shall inform the Office of Audiology and Hearing Aid Provider Licensure, in a manner set forth by the Director, within 30 days of any adverse action. For purposes of this rule, “adverse action” includes the following:

- A. Conviction or acceptance of a plea of guilty or nolo contendere or receipt of a deferred sentence in any court to a crime involving fraud, deception, false pretense, theft, misrepresentation, false advertising, or dishonest dealing.
- B. In regard to Hearing Aid Providers Associates and Trainees only: a felony conviction under the laws of any state or of the United States. For purposes of this rule, a “conviction” includes, but is not limited to: entry or acceptance to a plea of guilty, nolo contendere (no contest), or receipt of a deferred sentence in any court.
- C. A disciplinary action imposed upon the licensee by another jurisdiction which would or could reasonably be considered to be a violation of Part 1 or 2, Article 5.5, Section 12 C.R.S. For purposes of this rule any disciplinary action by another jurisdiction includes, but is not limited to, a revocation, suspension, probation, fine, sanction, or a denial of a license or authorization to practice.
- D. Any judgment, award, or settlement of a civil action or arbitration in which there was a final judgment or settlement against the licensee for failing to practice according to generally accepted professional standards.
- E. The notice to the Director shall include the following information:
  1. If the event is an action by a governmental agency (as described above): the name of the agency, its jurisdiction, the case name, the docket, proceeding or case number by which the event is designated, and a copy of the consent decree, order, or decision;
  2. If the event is a felony conviction: the court, its jurisdiction, the case name, the case number, a description of the matter or a copy of the indictment or charges, and any plea or verdict entered by the court. The licensee shall also provide to the Director a copy of

the imposition of sentence related to the felony conviction and the completion of all terms of the sentence within 90 days of such action;

3. If the event concerns a civil action or arbitration proceeding: the court or arbiter, the jurisdiction, the case name, the case number, a description of the matter or a copy of the complaint, and a copy of the verdict, the court or arbitration decision, or, if settled, the settlement agreement and court's order of dismissal.
- F. The licensee may submit a written statement with any notice under this rule to be included in the licensee records.
- G. This rule shall apply to any adverse action as described in paragraph A of this rule that occurs on or after the effective date of this rule.

### **Rule 8 – Duty to Report Information**

The purpose of this rule is to clarify the requirement of licensees to notify the Director of a change in submitted information pursuant to Section 24-34-107, C.R.S.

- A. The licensee shall inform the Office of Audiology and Hearing Aid Provider Licensure in a clear, explicit and unambiguous written statement of any name, address, telephone, or email change within 30 days of the change. The Office of Audiology and Hearing Aid Provider Licensure will not change a licensee's information without explicit written notification from the licensee. Notification by any manner approved by the Division is acceptable.
1. The Division of Registrations maintains one contact address for each licensee, regardless of the number of licenses the licensee may hold.
  2. Address change requests for some, but not all communications, or for confidential communications only, are not accepted.
- B. The Office of Audiology and Hearing Aid Provider Licensure requires one of the following forms of documentation to change a licensee's name or social security number:
1. Marriage license;
  2. Divorce decree;
  3. Court order; or
  4. Driver's license or social security card with a second form of identification may be acceptable at the discretion of the Division.