

## DEPARTMENT OF REGULATORY AGENCIES

### Office of Audiology and Hearing Aid Provider Licensure

#### HEARING AID PROVIDER RULES

##### 3 CCR 711-1

*[Editor's Notes follow the text of the rules at the end of this CCR Document.]*

#### AUTHORITY

**Basis:** These rules are promulgated and adopted by the Director of the Division of Professions and Occupations pursuant to section 12-5.5-301(4), C.R.S.

#### Purpose

These rules are adopted to implement the Director's authority to license persons as 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 pursuant to section 12-5.5-206, C.R.S., by a licensed hearing aid provider (licensee).

- A. Each licensee who sells a hearing aid or provides goods or services to a customer shall develop a written plan to ensure the maintenance of customer records pursuant to section 12-5.5-206, C.R.S., and must address at least the following:
1. The storage and proper disposal of customer records;
  2. The disposition of customer records in the event the licensee dies, retires, or otherwise ceases to practice or provide hearing aid provider services to customers; and
  3. The method by which customers may access or obtain their records promptly including if any of the events described in paragraph (2) above of this rule.
- B. 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 parts, accessories, and batteries), and the date and price of each transaction.

#### Rule 2 - Hearing Aid Provider Trainees, Apprentices, and Associates

The purpose of this rule is to establish the transition of trainee, apprentice, and associate license types pursuant to section 12-5.5-204, C.R.S.

- A. 1. As of July 1, 2013, no new trainee licenses will be issued. Trainee licenses that were issued prior to that date expired on June 30, 2013.
2. Pursuant to section 12-5.5-204(7), C.R.S., on and after June 1, 2014, a person in this state training to be a licensed hearing aid provider must possess a valid apprentice license issued by the Director.

3. A person in this state training to be a licensed hearing aid provider after June 30, 2013, and prior to June 1, 2014, may do so under the on-site, direct supervision of a licensed audiologist or hearing aid provider. However, such person is not permitted to sell hearing aids independently of the supervising audiologist or hearing aid provider.
- B. As of July 1, 2013, no new associate licenses will be issued. Associate licenses that are issued prior to that date are valid pursuant to section 12-5.5-204(6), C.R.S., until the expiration date on the license. An associate license cannot be renewed, and once it expires, it cannot be reinstated.

### **Rule 3 - 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 12-5.5-301(4) and 6-1-701(1)(c)(I)(A), C.R.S. that will protect such purchasers and that are necessary for the enforcement and administration of Article 5.5 of Title 12.

- A. The licensee shall identify themselves by listing their name, license type (i.e., 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 apprentices are regulated by the Division of Professions and Occupations.
  2. Any complaints can be filed against the licensee with the Office of Audiology and Hearing Aid Provider Licensure within the Division of Professions and Occupations.
  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 purchase agreement and must be clearly stated as non-refundable:
  1. 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.
  2. A provision that clearly identifies all professional services including, but not limited to, those listed in subsection 1 above, and the exact charge for each service.

### **Rule 4 - 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 5 – Requirement for Reinstatement**

The purpose of this rule is to state the requirements for reinstatement of a hearing aid provider license that has expired pursuant to section 12-5.5-202(2), C.R.S.

- A. A licensee applying for reinstatement of an expired license shall complete a reinstatement application, and pay a reinstatement fee.
- 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;
  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;
  3. Supervised practice for a period of no less than six months subject to the terms established by the Director;
  4. Retaking and achieving a passing score on the National Board for Certification in Hearing Instrument Sciences (NBC-HIS) accredited examination within two years immediately preceding submission of an application for reinstatement;
  5. Maintained active Board certification with NBC-HIS; 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 6 – 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 sections 12-5.5-201(2)(a) and (b)(II), 12-5.5-401(o), and 12-5.5-301(4), C.R.S. A licensee, as defined in section 12-5.5-101(8), C.R.S. including those licensed pursuant to section 12-5.5-204, 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 felony, or a crime involving fraud, deception, false pretense, theft, misrepresentation, false advertising, or dishonest dealing.
- B. A disciplinary action imposed upon the licensee by another jurisdiction which would or could reasonably be considered to be a violation of Article 5.5, Title 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.
- C. 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.
- D. 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 or a conviction of a crime involving fraud, deception, false pretense, theft, misrepresentation, false advertising, or dishonest dealing: 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; and
  - 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.
- E. The licensee may submit a written statement with any notice under this rule to be included in the licensee records.
- F. 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 7 – 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 Professions and Occupations 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.

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### **Editor's Notes**

#### **History**

Entire rule eff. 09/01/2010.

Entire rule temporarily eff. 07/01/2013.

Entire rule permanently eff. 10/15/2013.