

2007

STATE OF NEBRASKA

**STATUTES RELATING TO
HEARING AID INSTRUMENT DISPENSERS AND FITTERS**



Department of Health and Human Services
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STATUTES PERTAINING TO HEARING AID INSTRUMENT DISPENSERS AND FITTERS

71-4701. Terms, defined. As used in sections 71-4701 to 71-4719, unless the context otherwise requires:

- (1) Department shall mean the Department of Health and Human Services;
- (2) License shall mean a license issued by the state under such sections to hearing aid instrument dispensers and fitters;
- (3) Temporary license shall mean a license issued while the applicant is in training to become a licensed hearing aid instrument dispenser and fitter;
- (4) Board shall mean the Board of Hearing Aid Instrument Dispensers and Fitters;
- (5) Hearing aid shall mean 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. A hearing aid shall also be known as a hearing instrument;
- (6) Practice of fitting hearing aids shall mean 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 aids. 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; and
- (7) Sell, sale, or dispense shall mean any transfer of title or of the right to use by lease, bailment, or any other contract, excluding (a) wholesale transactions with distributors or dispensers and (b) distribution of hearing aids by nonprofit service organizations at no cost to the recipient for the hearing aid.

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; Laws 2007, LB296, § 589; Laws 2007, LB463, § 566. Operative date July 1, 2007.

71-4702. Sale or fitting of hearing aids; license required; posting. (1) No person shall engage in the sale of or practice of fitting hearing aids 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 aids unless he or she holds an unsuspended, unrevoked license issued by the department as provided in sections 71-4701 to 71-4719. The license shall be conspicuously posted in his or her office or place of business. A license shall confer upon the holder the right to select, fit, and sell hearing aids.

(2) A licensed audiologist who maintains a practice pursuant to licensure as an audiologist in which hearing aids are regularly dispensed or who intends to maintain such a practice shall also be licensed pursuant to subsection (4) of section 71-4707.

(3) Nothing in sections 71-4701 to 71-4719 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 aids at retail without a license if it employs only properly licensed natural persons in the direct sale and fitting of such products. Such corporation, partnership, limited liability company, trust, association, or like organization shall file annually with the board a list of all licensed hearing aid instrument dispensers and fitters directly or indirectly employed by it. Such corporation, partnership, limited liability company, trust, association, or like organization shall also file with the board a statement on a form approved by the board that it submits itself to the rules and regulations of the department and the provisions of such sections which the department deems applicable.

(4) Nothing in such sections shall prohibit the holder of a 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; Laws 2007, LB247, § 52; Laws 2007, LB247, § 70; Laws 2007, LB463, § 573. Operative date June 1, 2007.

71-4702.01. License; renewal; continuing competency requirements. Every hearing aid instrument dispenser and fitter who is licensed to practice in Nebraska and is in active practice in this state shall be required to complete continuing competency activities as required by the board pursuant to section 71-4716 as a condition for biennial renewal.

Source: Laws 1988, LB 1100, § 152; Laws 2002, LB 1021, § 84. Operative date January 1, 2003.

71-4703. Sale; conditions. (1) Any person who practices the fitting and sale of hearing aids shall deliver to each person supplied with a hearing aid 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 aid furnished, and clearly stating the full terms of sale. 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.

(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 aid instrument dispenser that any examination or representation made by a licensed hearing aid instrument dispenser and fitter in connection with the fitting and selling of this hearing aid 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.

Source: Laws 1969, c. 767, §3, p. 2905; Laws 1986, LB 701, §3. Effective date July 17, 1986.

71-4704. Sections; when not applicable. (1) Sections 71-4701 to 71-4719 are not intended to prevent any person from engaging in the practice of measuring human hearing for the purpose of selection of hearing aids if such person or organization employing such person does not sell hearing aids or accessories thereto.

(2) Such sections 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 aids unless the person to whom the authority is delegated is licensed under such sections.

Source: Laws 1969, c. 767, §4, p. 2905; Laws 1986, LB 701, §4; Laws 1988, LB 1100, §150. Operative date April 8, 1988.

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

71-4706. License; application; term; reciprocity. (1) Application for a license under sections 71-4701 to 71-4719 shall be made to the department on forms prescribed by the department and shall be accompanied by the fee established as provided in section 71-162. If the applicant is an individual, the application shall include the applicant's social security number. The department shall, without discrimination, issue a license to any person who passes an examination provided for in section 71-4707. The license shall be effective until December 31 of the next even-numbered year.

(2) Whenever the board determines that another state or jurisdiction has requirements equivalent to those in effect pursuant to sections 71-4701 to 71-4719 and that such state or jurisdiction has a program equivalent to the program for determining whether applicants pursuant to such sections are qualified to fit and sell hearing aids, the department may issue licenses to applicants who hold current, unsuspended, and unrevoked certificates or licenses to fit and sell hearing aids in such other state or jurisdiction. No such applicants for licensure shall be required to submit to or undergo a qualifying examination if his or her certificate or license is based upon a written examination equivalent to the Nebraska examination.

Source: Laws 1969, c. 767, § 6, p. 2906; Laws 1973, LB 515, § 21; Laws 1986, LB 701, § 5; Laws 1987, LB 473, § 52; Laws 1988, LB 1100, § 151; Laws 1989, LB 344, § 31; Laws 1997, LB 752, § 184; Laws 2003, LB 242, § 124. Operative date July 1, 2004.

71-4707. License; examination; conditions; exception. (1) Any person may obtain a license by successfully passing a qualifying examination if the applicant:

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

(2) Each applicant for license by examination shall appear at a time and 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 or she is qualified to practice the fitting and sale of hearing aids. 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 as determined by the board, except that a minimum of two examinations shall be offered each calendar year.

(4) The department shall issue a license without examination to a licensed audiologist who maintains a practice pursuant to licensure as an audiologist in which hearing aids are regularly dispensed or who intends to maintain such a practice upon application to the department, proof of licensure, and payment of a twenty-five-dollar fee.

Source: Laws 1969, c. 767, § 7, p. 2907; Laws 1986, LB 701, § 6; Laws 1987, LB 473, § 53; Laws 1988, LB 1100, § 153; Laws 2007, LB247, § 53; Laws 2007, LB247, § 71; Laws 2007, LB463, § 576. Operative date June 1, 2007.

71-4708. Temporary license; issuance; supervision; renewal; disciplinary actions. (1) The department upon recommendation of the board shall issue a temporary license to any person who has met the requirements for licensure pursuant to subsection (1) of section 71-4707. Previous experience or a waiting period shall not be required to obtain a temporary license.

(2) Any person who desires a temporary license shall make application to the department. Such application shall include the applicant's social security number and shall be accompanied by the required fee. The temporary license shall be issued for a period of one year. A person holding a valid license 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 license under this section has not successfully passed the licensing examination within twelve months of the date of issuance of the temporary license, the temporary license may be renewed or reissued for a twelve-month period upon payment of the required fee. In no case may a temporary 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.

(4) The department shall have the power to deny, revoke, limit, suspend, or otherwise discipline a temporary license upon the grounds and in accordance with the Uniform Licensing Law.

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. Operative date July 1, 2004.

71-4709. Qualifying examination; designed to demonstrate applicant's adequate technical qualifications. The qualifying examination provided in section 71-4707 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 aids:
 - (a) Basic physics of sound;
 - (b) The anatomy and physiology of the ear; and
 - (c) The function of hearing aids; and
- (2) Practical tests of proficiency in the following techniques as they pertain to the fitting of hearing aids:
 - (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 aid; and
 - (e) Taking earmold impressions.

Source: Laws 1969, c. 767, §9, p. 2908; Laws 1986, LB 701, §8. Effective date July 17, 1986.

71-4709.01. Examinations; department; duties. The department may adopt and promulgate rules and regulations to provide for the review of procedures for the development and administration of examinations and to protect the security of the content of examination questions and answers. The department shall not enter into an agreement to adopt an examination from a national testing service without first obtaining from that service detailed documentation of the process of examination development and maintenance.

Source: Laws 1987, LB 473, §54. Effective date March 27, 1987.

71-4710. Licensee; change of address; notice; place of business. (1) A person who holds a license under sections 71-4701 to 71-4719 shall notify the department in writing of the regular address of the place or places where he or she engages or intends to engage in the fitting or the sale of hearing aids.

(2) The department shall keep a record of the place of business of licensees.

(3) Any notice required to be given by the department to a person who holds a license shall be mailed to him or her by certified mail at the address of the last place of business of which he or she has notified the department.

Source: Laws 1969, c. 767, §10, p. 2909; Laws 1988, LB 1100, §155. Operative date April 8, 1988.

71-4711. License; renewal. Licenses issued pursuant to sections 71-4701 to 71-4719 shall be subject to biennial renewal and shall expire December 31 of each even-numbered year in accordance with section 71-110. Procedures for renewal shall be in accordance with sections 71-110 and 71-161.10.

Source: Laws 1969, c. 767, § 11, p. 2909; Laws 1973, LB 515, § 23; Laws 1986, LB 701, § 9; Laws 1988, LB 1100, § 156; Laws 1994, LB 1223, § 50; Laws 2002, LB 1021, § 85; Laws 2003, LB 242, § 126. Operative date July 1, 2004.

71-4712. Licensee; disciplinary action; grounds; procedure. (1) The department may deny, revoke, or suspend any license to practice as a hearing aid instrument dispenser and fitter issued by the department or applied for pursuant to section 71-4707 or otherwise discipline any applicant or licensee when the applicant or licensee commits or is convicted of any of the acts or offenses set out in sections 71-147 and 71-148 or the following acts or offenses:

(a) Fitting and selling a hearing aid to a child under the age of sixteen who has not been examined and cleared for hearing aid 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 aid within one year of its purchase;

(b) 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;

(c) Conducting business while suffering from a contagious or infectious disease; or

(d) Violating any provision of sections 71-4701 to 71-4719.

(2) The department shall deny, revoke, suspend, or otherwise discipline a license in accordance with the Uniform Licensing Law.

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. Operative date April 16, 1994.

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

71-4714. Department of Health; powers; duties. The powers and duties of the department are as follows:

- (1) To authorize all disbursements necessary to carry out sections 71-4701 to 71-4719;
- (2) To supervise issuance of licenses based on experience and administer qualifying examinations to test the knowledge and proficiency of applicants seeking to be licensed by examination;
- (3) To license persons who apply to the department and who are qualified to engage in the fitting and selling of hearing aids;
- (4) To issue and renew licenses;
- (5) To suspend or revoke licenses;
- (6) To designate the time and place for examining applicants;
- (7) To appoint representatives to conduct or supervise the examination;
- (8) To adopt and promulgate rules and regulations which shall set the passing score for examinations upon the recommendation of the board;
- (9) To adopt and promulgate rules and regulations not inconsistent with the laws of this state which are necessary to carry out such sections; and
- (10) To appoint or employ subordinate employees.

Source: Laws 1969, c. 767, §14, p. 2913; Laws 1986, LB 701, §11; Laws 1988, LB 1100, §158. Operative date April 8, 1988.

71-4714.01. Fees. The fees for credentialing activities under sections 71-4701 to 71-4719 shall be established and collected as provided in section 71-162.

Source: Laws 1988, LB 1100, § 159; Laws 1992, LB 1019, § 80; Laws 2003, LB 242, § 127. Operative date July 1, 2004.

71-4715. Board of Hearing Aid Instrument Dispensers and Fitters; established; membership; terms; chairperson; compensation; expenses; removal. (1) There is hereby established a Board of Hearing Aid Instrument Dispensers and Fitters which shall guide, advise, and make recommendations to the department.

(2) Members of the board shall be residents of the state. The board shall consist of three hearing aid instrument dispensers and fitters, one otolaryngologist, one audiologist, and one public member. Each hearing aid instrument dispenser and fitter on the board shall have not less than five years of experience and shall hold a valid license. The public member shall be at least the age of majority, a resident of this state at least five years preceding appointment, and a representative of consumer viewpoints.

(3) All members of the board shall be appointed by the State Board of Health. The term of office of each member shall be for four years, except that of the first members appointed under sections 71-4701 to 71-4719, two shall be appointed for two years, two shall be appointed for three years, and one shall be appointed for four years. The State Board of Health shall appoint the public member as of December 1, 1994, for a term of four years. Before a member's term expires, the State Board of Health shall appoint a successor to take office on the expiration of such term. A vacancy in the office of a member shall be filled by appointment for the unexpired term. The members shall annually designate one member to serve as chairperson and another to serve as secretary-treasurer. No member who has served two or more full terms may be reappointed to the Board of Hearing Aid Instrument Dispensers and Fitters until at least one year after the expiration of his or her most recent full term of office.

(4) Members of the board shall receive for each day actually engaged in the duties of the office a per diem amount of twenty-five dollars and reimbursement for actual and necessary travel and other expenses as provided in sections 81-1174 to 81-1177. Such remuneration and reimbursement shall be paid from appropriations made for this purpose.

(5) The State Board of Health shall have power to remove from office at any time any member of the Board of Hearing Aid Instrument Dispensers and Fitters, after a public hearing pursuant to the Administrative Procedure Act, for physical or mental incapacity to carry out the duties of a board member, for continued neglect of duty, for incompetency, for acting beyond the individual member's scope of authority, for malfeasance in office, for any cause for which a license in the member's profession may be suspended or revoked, for a lack of licensure in the member's profession, or for other sufficient cause.

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. Effective date August 28, 1999.

71-4715.01. Board; conflicts of interest. The department shall adopt and promulgate rules and regulations which establish definitions of conflicts of interest for members of the board and which establish procedures in the case such a conflict arises.

Source: Laws 1987, LB 473, §51. Effective date March 27, 1987.

71-4716. Board; duties. (1) The board shall advise the department in all matters relating to sections 71-4701 to 71-4719, shall prepare the examinations required by such sections for the department, shall by a vote of four-fifths recommend licensure, and shall assist the department in carrying out the provisions of such sections.

(2) The department shall be guided by the recommendations of the board in all matters relating to such sections.

(3) The board shall establish continuing competency requirements for persons licensed under such sections. Continuing education is sufficient to meet continuing competency requirements. The requirements may also include, but not be limited to, one or more of the continuing competency activities listed in section 71-161.09 which a licensed person may select as an alternative to continuing education. The requirements shall be approved by the board and adopted and promulgated by the department in rules and regulations.

Source: Laws 1969, c. 767, § 16, p. 2915; Laws 1988, LB 1100, § 161; Laws 2002, LB 1021, § 86. Operative date January 1, 2003.

71-4717. Board; meetings. The board shall meet not less than once 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.

Source: Laws 1969, c. 767, §17, p. 2915.

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

71-4719. Violations; penalty. Any person violating the provisions of sections 71-4701 to 71-4719 shall be guilty of a Class III misdemeanor, and the license of any person so convicted shall be automatically revoked.

Source: Laws 1969, c. 767, §19, p. 2915; Laws 1977, LB 39, §177; Laws 1988, LB 1100, §163. Operative date April 8, 1988.