



HEARING AID DISPENSERS PRACTICE COMMITTEE MEETING MINUTES
July 26, 2010

East End Complex
1500 Capitol Avenue
Hearing Room #72.167
Sacramento, CA
(916) 263-2666

Committee Members Present

Deane Manning, Hearing Aid Dispenser
Sandra Danz, Hearing Aid Dispenser
Rodney Diaz, M.D.
Alison Grimes, AuD., Audiologist
Robert Green, Au.D. Audiologist

Staff Present

Annemarie Del Mugnaio, Executive Officer
LaVonne Powell, Legal Counsel
Debbie Newcomer, Staff
Kathi Burns, Staff
Cynthia Alameda, Staff
Yvonne Crawford, Staff

Board Members Present

Carol Murphy, M.A.
Lisa O'Connor, M.A.

Guests Present

Tricia Hunter, Hearing Health Care Providers California (HHP CA)
Cindy Peffers, HHP CA
Jody Winzelberg, California Academy of Audiology (CAA)
Marcia Raggio, CAA
Rebecca Binge, UCSF

I. Call To Order

Chairperson Manning called the meeting to order at 9:07 a.m.

II. Introductions

Those in attendance introduced themselves.

III. Proposed Regulation Amendments Pertaining to Continuing Education Requirements for Licensed Hearing Aid Dispensers – California Code of Regulations Section 1399-140-1399.143

Ms. Del Mugnaio reviewed the discussion and proposals that were presented at the previous board meeting regarding Section 1399.140 (a), which would increase the number of Continuing Education (CE) hours required for the license renewal of hearing aid dispensers to twelve (12) hours per year. She also

reviewed the proposed limit of three (3) hours in indirect and related course content areas and another limit of three (3) hours for self-study courses.

Ms. Del Mugnaio also reviewed subsection 1399.140 (e), which currently provides a grace period of one-year if a licensed dispenser is unable to completed the requisite number of CE hours for license renewal in the previous year. She suggested striking subsection (e) since the regulations authorize a waiver for extenuating circumstances.

It was noted that most boards/bureaus have a two-year renewal cycle and thus provide a full twenty-four (24) month time frame for completing the requisite CE. Committee members commented that it may be difficult to find non-manufacturer hearing aid courses within a one-year period.

Ms. Del Mugnaio stated that the current exemption requirement (medical, health, military, and hardship) is available and specified in regulation for speech-language pathologists and audiologists. She indicated that other boards and bureaus have different exemptions/allowances/grace periods and that perhaps the CE exemptions for hearing aid dispensers should be more in line with other licensing provisions.

The Committee discussed the option of striking subsection (e), but was concerned that removing the grace period and increasing the CE renewal requirements to twelve (12) hours per year was too burdensome to enact for the hearing aid dispenser population at one time. There was also concern expressed that both the grace period and the increase in renewal hours could lead to opposition from the professional hearing-aid dispenser community.

Ms. Del Mugnaio presented information regarding the proposed amendments to Section 1399.141 (c) regarding the course approval process and specified timeframes. She indicated that subject matter experts would be employed to review hearing aid courses offered by manufacturers to ensure the course content was not marketing based.

Ms. Powell suggested edits to the language regarding the provider appeal process and indicated that the Executive Officer may be the responsible party for reviewing denials of provider applications.

Motion to approve 1399.140 (a) (1-2), 1399.140.1, 1399.141, 1399.142, and 1399.143 as amended to increase the number of CE hours that a hearing aid dispenser must accrue in one-year to: twelve (12) hours, with a limitation of three (3) hours in self study (excluding live and on-demand courses) and a limitation of three (3) hours in related or indirect client care courses. The amendments include CE definitions for direct, indirect, and related client care course work, and provider and course submission requirements.

M/S/C: Green/Diaz, Opposed: Grimes

IV. Legislative Proposal re Song-Beverly Consumer Warranty Act (California Civil Code Section 1793.02)

Chairperson Manning referenced the Song-Beverly legislative proposal included in the meeting packet that addressed provisions within the Song-Beverly Act related to the definition of fitting and adjustments to hearing aids and the imposed timeframes for consumers seeking a refund.

Chairperson Manning indicated that the proposal includes a definition of the fitting period as a 30-day period wherein a consumer has possession of the purchased hearing aid. However, the 30-day period does not include any period of time where the hearing aid is out of the user's possession for a remake or adjustments and, as such, the 30-day time period may or may not be consecutive. Once

the hearing aid is returned to the user, the 30-day time period resumes, but does not restart at day one.

Additionally, Chairperson Manning explained issues surrounding circumstances where a client neglects to pick up the hearing aid from the dispenser once notified or situations where the dispenser fails to contact the client in a timely manner that the hearing aid is ready for pick up. He stated that the warranty period should not restart until the hearing aid is in the user's possession; however, issues regarding failing to retrieve the hearing aid upon repair must be addressed to avoid lengthy delays where the hearing aid is not in use. Chairperson Manning mentioned that other states have addressed this; for example, if the hearing aids are not picked up within seven days, the 30-day warranty period resumes. He indicated that another issue is when a dispenser delays the fitting/servicing of a hearing aid.

Ms. Del Mugnaio stated that the tolling period would address the issue where the provider has not been reasonable in allowing the client to return to have the aid adjusted; therefore, appropriate tolling language could be crafted by regulation.

Chairperson Manning expressed concern related to the consumer being aware of their rights when the fitting of the hearing aid is delayed by the dispenser.

Ms. Del Mugnaio indicated that the consumer rights related to this matter would be included in the warranty information provided to the consumer.

The Committee agreed that the use of the terminology "right of return," instead of "warranty period," is more appropriate in describing the specified provisions. Specific consumer issues, the importance of counseling the consumer, and clearly defining the consumer's rights and responsibilities were discussed.

Ms. Del Mugnaio explained that Song-Beverly in its current form is nebulous and difficult to enforce, and has been interpreted different ways (including interpretations by the Attorney General's Office). Therefore, the Board should clearly define the return rights of the consumer by regulation, as this will assist the consumer and the provider in complying with said terms. She also indicated that it is the provider's responsibility to communicate the terms to the consumer in a manner that they can understand.

Mr. Green proposed that there be an addendum to the purchase receipt to document the 30-day warranty period.

Ms. Del Mugnaio referenced the sample receipt drafted by Mr. Green, as included in the meeting packet, and indicated that use of a receipt similar to the draft document would be helpful documentation for the provider. She also commented that the specified dates of service and delivery or pick-up noted included in the draft document would assist Board staff in resolving complaints. Discussion ensued regarding the proposed receipt.

Ms. Powell suggested that the Board may want to consider changing the Song-Beverly Consumer Warranty Act such that the Board would be authorized to develop regulations to address specific return and refund provisions, which could then be amended as necessary.

The Committee directed Ms. Del Mugnaio and Ms. Powell to draft proposed legislation with exclusionary Song-Beverly language for the Committee to review at the next meeting.

Ms. Del Mugnaio suggested that the Committee draft regulatory language to implement the legislative authority, including defining the right of return period, exclusions, and non-refundable fees.

In response to questions related to non-refundable fees, discussion ensued regarding unbundling of fees.

Chairperson Manning explained that this issue could be addressed in the regulations.

V. Use of the Term Audioprosthologist by Hearing Aid Dispensers

Ms. Del Mugnaio explained the history and legal issues related to the use of the term “Audioprosthologist.” She discussed the legal parameters surrounding use of the term in advertisements and explained the individual protections regarding freedom of speech, First Amendment laws, and consumer protection laws. She stated that prior discussions with the former Board surrounded the possibility of conducting a formal survey of consumers with the intended goal of determining the average consumer’s understanding of the term “Audioprosthologist.” Ms. Del Mugnaio stated that the Board did not have the resources at the time to conduct a large-scale formal survey and, therefore, did not pursue further research. Ms. Del Mugnaio also stated that the Board has not received any consumer complaints regarding the use of the term “Audioprosthologist,” and thus did not believe at this point that the advertising of the term has posed a significant consumer risk.

The Committee decided to table this matter, as immediate action regarding the issue was not warranted.

The Committee adjourned at 10:25 a.m.