



OHIO LEGISLATIVE SERVICE COMMISSION

Final Analysis

Bob Bennett

Sub. H.B. 420

132nd General Assembly
(As Passed by the General Assembly)

Reps. Sykes and Boyd, Boccieri, Ashford, Antonio, LaTourette, Lepore-Hagan, Ginter, K. Smith, Sprague, Howse, Riedel, Boggs, Kent, Carfagna, Kick, West, Sheehy, Brenner, Anielski, Blessing, Brinkman, Brown, Craig, Cupp, Edwards, Faber, Galonski, Gavarone, Green, Hagan, Hambley, Henne, Hill, Holmes, Hood, Hoops, Ingram, T. Johnson, Koehler, Landis, Lanese, Lang, Leland, McClain, Miller, O'Brien, Patterson, Patton, Pelanda, Perales, Ramos, Retherford, Roegner, Rogers, Romanchuk, Ryan, Schaffer, Scherer, Schuring, T. Smith, B. Sweeney, Thompson, Wilkin, Young, R. Smith

Sens. Gardner, Hackett, Beagle, Burke, Brown, Eklund, Hottinger, LaRose, Lehner, Manning, Obhof, O'Brien, Peterson, Schiavoni, Skindell, Sykes, Tavares, Thomas, Uecker, Williams, Wilson, Yuko

Effective date: April 5, 2019

ACT SUMMARY

Ohio Adoption Awareness Month

- Designates November as "Ohio Adoption Awareness Month."

State Speech and Hearing Professionals Board

- Requires a hearing aid dealer's or fitter's license to be renewed biennially rather than annually.
- Requires the State Speech and Hearing Professionals (SHP) Board to adopt rules establishing the amount of any fee required under the Hearing Aid Dealers Law and eliminates the statutorily specified fees.
- Expands the SHP Board's duties from investigating specific complaints to investigating all alleged irregularities in the sale or practice of dealing in or fitting

* This version updates the effective date.

hearing aids by any licensee or permit holder, as well as any violations of the Hearing Aid Dealers Law or the Board's rules.

- Revises the list of reasons for which the SHP Board may discipline a licensee or permit holder and the actions it may take for certain violations.
- Requires the SHP Board to act in accordance with the Administrative Procedure Act before disciplining a licensee or permit holder based on a complaint or investigation.
- Requires the SHP Board to adopt rules establishing the information that must be included in a hearing aid receipt.
- Specifies that tests and related materials used in an examination are not public records under the Public Records Law.

Optical dispensing

- Requires the State Vision Professionals Board to provide each applicant for an optical dispensing license with all forms required to apply for examination, instead of permitting a testing service to provide the forms.
- Requires an optical dispensing apprentice to register with the Board on a form provided by the Board and in the form of a statement that includes specified information, instead of allowing registration with either the form or a statement.

Behavioral health providers and Medicaid criminal records checks

- Modifies an exemption from Medicaid criminal records check requirements under which certain Medicaid providers may employ persons despite the requirements, as long as claims are not submitted for the employees' services.
- Limits the exemption to: (1) a Medicaid provider of behavioral health services and (2) an employee or prospective employee who holds or is in the process of obtaining a license as a behavioral health professional or a certificate as a peer recovery supporter.



TABLE OF CONTENTS

ADOPTION AWARENESS	3
Ohio Adoption Awareness Month	3
LICENSING LAW CHANGES	3
State Speech and Hearing Professionals Board	3
Biennial license renewal	3
Continuing education	4
Current licensees	4
Fees	5
Investigations	5
Discipline	6
Reasons for discipline	6
Disciplinary procedures	8
Types of discipline	9
Reinstatement after revocation	10
Customer receipts	10
Change of address notice	11
Qualifying examination	11
Public records exemption	12
Additional rules	12
Optical dispensing	12
Behavioral health providers and Medicaid criminal records checks	13

CONTENT AND OPERATION

ADOPTION AWARENESS

Ohio Adoption Awareness Month

The act designates November as "Ohio Adoption Awareness Month."¹

LICENSING LAW CHANGES

State Speech and Hearing Professionals Board

Biennial license renewal

The act requires a hearing aid dealer's or fitter's license to be renewed biennially, rather than annually as required under prior law. Under the act, a license generally expires on December 31 of the even-numbered year after it was issued. The license must be renewed in accordance with the Standard Renewal Procedure on or before that date. However, a license issued less than 100 days before December 31 (after September 22) of

¹ R.C. 5.2314.



an even-numbered year expires on December 31 of the following even-numbered year. After the license is renewed the first time, it must be renewed biennially in the same manner as a license issued more than 100 days before December 31 of an even-numbered year. Under prior law, a license expired on January 30 of the year following the year it was issued and had to be renewed annually.²

Continuing education

Under the act, a licensee must complete at least 20 hours of continuing education during a two-year license period as a condition of renewing a license. Previously, a licensee had to complete at least ten hours annually.³

The act specifies that continuing education provided or certified by the International Hearing Society is permissible, whereas under prior law only continuing education provided or certified by the National Institute of Hearing Instruments Studies Committee of the International Hearing Society was permissible.⁴

Current licensees

A licensee who intends to renew a license issued before the change from annual to biennial renewal must certify to the State Speech and Hearing Professionals (SHP) Board, by January 30, 2020, and on a form provided by the Board, that the licensee has completed at least ten hours of approved continuing education between January 1, 2019, and January 30, 2020. If the licensee completes the certification and provides any additional information about the continuing education that the SHP Board requires, the licensee's license remains valid until December 31, 2021. A licensee who has a license issued before the change and does not intend to renew the license must certify to the SHP Board by January 30, 2020, that the licensee does not intend to renew. If the licensee certifies the licensee's intent not to renew, the license expires January 31, 2020. A license held by any person who fails to submit the required certification expires on January 31, 2020. The person may apply for a new license using the procedures for initial licensure.

The SHP Board, no later than November 1, 2019, must notify all licensees of the requirement to certify the licensees' intention to renew or not renew to the Board.⁵

² R.C. 4747.05(C) and 4747.06(A), by reference to R.C. Chapter 4745.

³ R.C. 4747.06(B).

⁴ R.C. 4747.06(B)(1).

⁵ Section 4.



Fees

The act requires the SHP Board to adopt rules establishing the amount of the fees required under the Hearing Aid Dealers Law and eliminates the statutory fees prescribed under prior law.⁶ The following table summarizes the amounts specified in prior law:

Type of fee	Prior amount	Citation
Hearing aid dealer's or fitter's license application fee	\$262	R.C. 4747.05
Hearing aid dealer's or fitter's trainee permit application fee	\$150	R.C. 4747.10
Hearing aid dealer's or fitter's license renewal fee	\$157 - \$210 (depended on renewal date)	R.C. 4747.06
Hearing aid dealer's or fitter's trainee permit renewal fee	\$105	R.C. 4747.10
Hearing aid dealer's or fitter's license duplicate copy fee	\$16	R.C. 4747.07

Investigations

Prior law appeared to permit the SHP Board to investigate only specific complaints. Under the act, the Board must investigate both:

- Alleged irregularities in the sale or practice of dealing in or fitting hearing aids by a licensee or temporary permit holder;
- Violations of the Hearing Aid Dealers Law or rules adopted by the Board.

The act prohibits the SHP Board from investigating a licensed physician, a licensed audiologist, or any person who measures human hearing for the purpose of selecting a hearing aid without conducting an actual sale.

When conducting an investigation under the act, the SHP Board may administer oaths, order depositions, issue subpoenas, and compel witnesses to produce documents and testify. If a person disobeys or neglects a subpoena served by the Board or refuses to testify to a matter within its investigation, the Board may apply for a court order

⁶ R.C. 4747.04(B).

compelling the person to cooperate. The application must be filed in the court of common pleas for the county in which the disobedience, neglect, or refusal occurred.⁷

Discipline

Reasons for discipline

The act revises the list of reasons for which the SHP Board may discipline a licensee or trainee permit holder. The table below compares the list of reasons for discipline under prior law to the list under the act:

Prior law (R.C. 4747.12)	The act (R.C. 4747.12)
Being convicted of a "disqualifying offense" or a "crime of moral turpitude" as defined in continuing law.	Same, but eliminates a provision making the record of conviction or a certified copy of the record conclusive evidence of the conviction.
Procuring a license or permit through fraud or deceit on the Board.	Same.
Obtaining a fee or selling a hearing aid through fraud or misrepresentation.	Same.
Employing a person to fit or sell hearing aids knowing that the person's license was suspended or revoked.	No provision.
Using or causing or promoting the use of misleading, deceptive, or untruthful advertising, literature, testimonials, guarantees, warranties, labels, brands, insignias, or other representations.	Same.
Advertising a model or type of hearing aid for sale when purchasers or prospective purchasers responding to the advertisement cannot purchase the model or type of hearing aid.	Same.
Representing or advertising falsely that the service or advice of a licensed physician will be used or made available during the process of purchasing, maintaining, or repairing a hearing aid or falsely using words, abbreviations, or symbols that indicate the licensee or permit holder is a medical professional.	Same.

⁷ R.C. 4747.13.



Prior law (R.C. 4747.12)	The act (R.C. 4747.12)
Being found by the Board to be a person of habitual intemperance or gross immorality.	Providing professional services while mentally incompetent or under the influence of alcohol or while using any narcotic or controlled substance or other drug in excess of therapeutic amounts or without valid medical indication.
Advertising a manufacturer's product or using a manufacturer's name or trademark in a manner that falsely suggests the existence of a relationship with the manufacturer.	Same.
Fitting or selling, or attempting to fit or sell, a hearing aid to a person without first using appropriate procedures and instruments required for proper fitting.	Same.
Fitting and selling hearing aids under a false name or an alias.	Same.
Dealing in or fitting hearing aids while suffering from a contagious or infectious disease.	Same.
Being found by the Board to be guilty of gross incompetence or negligence in the fitting or selling of hearing aids.	Same.
Permitting another person to use the licensee's license.	Same.
Violating the Board's code of ethical practice.	Same.
No provision.	Making or filing a false report or record in the sale or dispensing of a hearing aide.
No provision.	Aiding or abetting the unlicensed sale, fitting, or dispensing of a hearing aid.
No provision.	Committing an act of dishonorable, immoral, or unprofessional conduct while selling or fitting a hearing aid.
No provision.	Engaging in illegal, incompetent, or habitually negligent practice.
No provision.	Violating the Hearing Aid Dealers Law or any lawful order given or rule adopted by the Board.

Prior law (R.C. 4747.12)	The act (R.C. 4747.12)
No provision.	Being disciplined by a licensing or disciplinary authority in Ohio or any other state or country or being convicted or disciplined by an Ohio court of another state or country court for an act that would be grounds for discipline under the Hearing Aid Dealers Law.

In addition to the reasons for discipline listed above, the act requires the SHP Board to adopt rules identifying additional conduct for which it may discipline a licensee or trainee permit holder. The Board may discipline a licensee or trainee permit holder for any reason identified in the adopted rules.⁸

Disciplinary procedures

The act requires the SHP Board to act in accordance with the Administrative Procedure Act⁹ (APA) before disciplining a licensee or permit holder.¹⁰ Under the APA, the Board must provide a notice to the licensee or trainee permit holder by registered mail, return receipt requested, informing the licensee or trainee permit holder that the licensee or permit holder has the right to a hearing before being disciplined. The notice must include:

- The charges or other reasons for the proposed discipline;
- The law or rule directly involved;
- A statement informing the licensee or permit holder that the licensee or permit holder may request a hearing within 30 days;
- A statement that the licensee or permit holder may present positions, arguments, or contentions in writing and present evidence and examine witness either in person or through a legal representative permitted to practice before the Board.

A copy of the notice must be mailed to any representatives of record representing the licensee or trainee permit holder. If the licensee or permit holder

⁸ R.C. 4747.04(B) and 4747.12(A).

⁹ R.C. Chapter 119.

¹⁰ R.C. 4747.04(A), 4747.12(A), and 4747.13(A).

requests a hearing in accordance with the notice, the SHP Board must immediately set a date, time, and place for the hearing. Unless otherwise agreed, the hearing date must be within 15 days after the licensee or permit holder requests the hearing, but it cannot be earlier than seven days after the request. The Board must immediately notify the licensee or permit holder of the date, time, and place of the hearing. Before the hearing, the Board may take depositions and issue subpoenas for witnesses and documents. It must issue subpoenas for witnesses and documents when requested to do so by a party to the hearing. The Board may require the witnesses to attend the hearing and produce the documents. After the hearing, the Board must issue an order or approve, modify, or disapprove a recommendation from a referee or examiner who conducted the hearing on its behalf. The Board must serve the order on the licensee or permit holder by certified mail, return receipt requested, and include a statement of the time and method by which the licensee or permit holder can appeal the order to a court.¹¹

Prior law required the SHP Board to follow a process similar to the APA before disciplining a licensee or trainee permit holder, subject to the following differences:

- The Board was required to set the date, time, and place for a disciplinary hearing before sending notice;
- The Board was required to deliver the notice, either in person or by registered mail, at least 20 days before the hearing date;
- Each party was permitted to take depositions before the hearing but had to give the other party notice of the time, date, and place where the deposition would be taken at least five days before the deposition date.¹²

Types of discipline

Under the act, the SHP Board may revoke, suspend, place on probation, or refuse to issue or renew a license or trainee permit or reprimand a licensee or trainee permit holder for the reasons listed under "**Reasons for discipline**," above. Under prior law, the Board was permitted only to revoke or suspend a license or permit.¹³

¹¹ R.C. 119.06, 119.07, 119.09, and 119.12, not in the act.

¹² R.C. 4747.04(A) and 4747.13(A).

¹³ R.C. 4747.12(A).



Reinstatement after revocation

The act permits a person whose license has been revoked by the SHP Board to apply for reinstatement. The Board may require the applicant to complete an examination or additional continuing education as a condition of the reinstatement.¹⁴

Customer receipts

The act requires the SHP Board to adopt rules establishing the information that must be included in a hearing aid receipt.¹⁵ Continuing law requires each licensed hearing aid dealer or fitter to furnish each person supplied with a hearing aid a receipt. Prior law, repealed by the act, required the receipt to include:

- The licensee's signature, business address, and license certificate number;
- A complete description of the make and model of the furnished hearing aid;
- The full terms of sale, including the terms of any guarantee;
- If the hearing aid sold was not new, a clear marking that the hearing aid was "used" or "reconditioned";
- In type no smaller than that used in the body of the receipt, the following statement:

The purchaser is advised that any examination, fitting, recommendation, or representation made by a licensed hearing aid dealer or fitter in connection with the sale of this hearing aid is not an examination, diagnosis, or prescription made by a person licensed to practice medicine in this state and therefore must not be regarded as medical opinion or advice.¹⁶

¹⁴ R.C. 4747.12(B).

¹⁵ R.C. 4747.04(B).

¹⁶ R.C. 4747.09.



Change of address notice

The act requires the SHP Board to adopt rules governing the amount of time a licensee or permit holder has to notify the Board of a change in address or addresses. The Board also must adopt rules for any other requirements relating to the notice.¹⁷

Continuing law requires a licensee or trainee permit holder to notify the SHP Board in writing of the place where the person engages or intends to engage in the business of dealing and fitting hearing aids. A licensee or permit holder also must notify the Board in writing of any change in address. Prior law required a licensee or permit holder to immediately inform the Board of the change. It also required the Board to keep a record of past and current places of business for each licensee and permit holder. The act eliminates a requirement that the Board, with respect to notices sent to a licensee or permit holder under the Hearing Aid Dealers Law, mail the notice to the licensee or trainee permit holder by certified mail at the licensee's or holder's current or most recent business address as revealed by the Board's records.¹⁸

Qualifying examination

Under the act, the SHP Board must establish the nature and scope of the qualifying examination for a hearing aid dealer's or fitter's license, rather than design, prepare, and revise the examination as under prior law.¹⁹ The act does not change the following requirements:

(1) The examination must have written and practical portions that cover:

- Basic physics of sound;
- The anatomy and physiology of the human ear;
- The function and purpose of hearing aids;
- Pure tone audiometry, including air conduction and bone conduction testing;
- Live voice or recorded voice speech audiometry, including speech reception threshold testing and speech discrimination testing;
- Masking techniques;

¹⁷ R.C. 4747.04(B).

¹⁸ R.C. 4747.11.

¹⁹ R.C. 4747.04(A) and 4747.08.



- Recording and evaluation of audiograms and speech audiometry to determine proper selection and adaptation of hearing aids;
- Earmold impression techniques.

(2) The examination must thoroughly test the knowledge required for the proper selecting, fitting, and sale of hearing aids, but it may not be so difficult as to require a medical or surgical education for successful completion.²⁰

Public records exemption

The act specifies that test materials, examinations, answer keys, or evaluation tools used in the Hearing Aid Dealers Law or Speech-Language Pathologists and Audiologists Law, whether administered by the SHP Board or by a private or government entity pursuant to a contract, are not public records under the Public Records Law (R.C. Chapter 149.).²¹

Additional rules

The act requires the SHP Board to adopt any other reasonable rules necessary for the administration of the Hearing Aid Dealers Law. The rules must be adopted in accordance with the APA.²²

Optical dispensing

Persons who wish to engage in optical dispensing must file an application for examination with the State Vision Professionals Board or with a testing service with which the Board has contracted. The act requires the application to be made using a form provided by the Board, instead of permitting either the Board or the testing service to provide the form, as under prior law. Under the act, the Board must provide to each applicant all forms required to apply for examination.²³

The act eliminates a requirement that the application be returned to the Board or the testing service at least 60 days before the examination is administered.²⁴

²⁰ R.C. 4747.08

²¹ R.C. 4747.08 and 4753.05(B).

²² R.C. 4747.04(B).

²³ R.C. 4725.48 and 4725.49.

²⁴ R.C. 4725.48.

A licensed dispensing optician may supervise up to three apprentices, who are permitted to engage in optical dispensing under the optician's authority. To serve as an apprentice, the act requires a person to register with the Board on a form provided by the Board and also requires a statement giving the supervising optician's name and address, the location at which the apprentice will be employed, and any other information required by the Board. The apprentice must register annually for the duration of the apprenticeship using both the provided form and the statement. Under prior law, an apprentice could complete both the initial and annual registrations either by registering on a Board-provided form or with a statement giving the required information.²⁵

Behavioral health providers and Medicaid criminal records checks

The act revises a recently enacted exemption to certain Medicaid criminal records check requirements. Under S.B. 229 of the 132nd General Assembly, Medicaid providers are authorized to employ a person whom the provider otherwise would be prohibited from employing because of the requirements. (The exemption does not apply in the case of persons who are subject to criminal records checks as employees or prospective employees of any of the following: (1) providers of community-based long-term care services covered by Department of Aging-administered programs, (2) home health agencies, (3) hospice care programs, (4) pediatric respite care programs, (5) nursing homes, (6) residential care facilities (i.e., assisted living facilities), (7) adult day-care programs, (8) providers of specialized services to individuals with developmental disabilities, and (9) providers of home and community-based services covered by Department of Medicaid-administered waiver programs.) If the Medicaid provider employs a person under the S.B. 229 exemption, the provider cannot submit Medicaid claims for the person's services.²⁶

The act limits the exemption created by S.B. 229, as follows:²⁷

- To Medicaid providers of behavioral health services, which are alcohol and drug addiction services, mental health services, or both;
- To employees and prospective employees who hold valid health professional licenses issued under Ohio law granting authority to provide behavioral health services or are in the process of obtaining such a license;

²⁵ R.C. 4725.52.

²⁶ R.C. 5164.34.

²⁷ R.C. 5164.34(I).



- To employees and prospective employees who hold valid certificates as peer recovery supporters or are in the process of obtaining such a certificate. The Ohio Department of Mental Health and Addiction Services has adopted rules for certification of peer recovery supporters. The rules describe a peer recovery supporter as someone with a direct, lived experience who has self-identified as being in recovery from a mental health or substance use disorder.²⁸

The act retains the requirement that Medicaid claims cannot be submitted for the services.

HISTORY

ACTION	DATE
Introduced	11-21-17
Reported, H. Community & Family Advancement	05-29-18
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Reported, S. Health, Human Services & Medicaid	12-19-18
Passed Senate (32-0)	12-19-18
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18-HB420-UPDATED-132.docx/ks

²⁸ Ohio Administrative Code 5122-29-15.1.

