

Title 22. Examining Boards

Part 7. State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments

Chapter 141. Fitting and Dispensing of Hearing Instruments

Amendments to §§141.2, 141.3, 141.6, 141.9, 141.11, 141.13, 141.16, 141.17, 141.18, 141.20, and 141.28

New §141.30 and §141.31

Proposed Preamble

The State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments (committee), proposes amendments to §§141.2, 141.3, 141.6, 141.9, 141.11, 141.13, 141.16, 141.17, 141.18, 141.20, and 141.28, and new §141.30 and §141.31, concerning the licensing and regulation of fitters and dispensers of hearing instruments.

BACKGROUND AND PURPOSE

The amendments to §141.28 are necessary to implement the requirements of SB 162 and House Bill (HB) 2254, 83rd Legislature, Regular Session, 2013, relating to requirements for licensure of military service members, military veterans, and military spouses.

New §141.30 is necessary to implement the requirements of Senate Bill (SB) 312, 83rd Legislature, Regular Session, 2013, which added Texas Occupations Code, §402.1023, for the committee to jointly adopt rules, with the assistance of the Department of State Health Services (department), with the State Board of Examiners for Speech-Language Pathology and Audiology (board) to establish requirements for the fitting and dispensing of hearing instruments by telepractice.

New §141.31 will initiate rulemaking in response to a petition submitted to the committee on behalf of a fitting and dispensing business requesting adoption of a rule establishing procedures for rulemaking petitions. The new rule will prescribe the content and procedural requirements for petitioning the committee for the adoption of rules, as required under Government Code, §2001.051.

Amendments to the following rules are proposed to clarify, correct, or update various rules to improve licensee understanding of the rules and the use of consistent terminology, and to accommodate evolving licensing processes and procedures, as further described in the summary for each section: §§141.2, 141.3, 141.6, 141.9, 141.11, 141.13, 141.16, 141.17, 141.18, and 141.20.

SECTION-BY-SECTION SUMMARY

The amendments to §141.2 are proposed to refine and clarify the definition of certain terms used in the chapter, and to improve consistency with standard usage within the profession.

The amendments to §141.3 are proposed to improve consistency in terminology used within the chapter.

The amendments to §141.6 will specify only those licensure examination fees collected by the committee to cover the costs of administering the licensing and regulatory program for fitters and

dispensers of hearing instruments. Under existing rule, a single examination fee of \$250 is specified, without distinguishing between the written and practical examination, or an initial or retake examination. The third party administrator for the written portion of the required examination has collected the \$250 fee and returned \$100 to the committee for its administration of the practical portion of the required licensure examination. If only the written or practical examination had to be re-taken, the applicant sent the third party written examination administrator or the committee, which administers the practical retake examination, the entire rule examination fee of \$250 for the applicable examination being retaken.

As amended, the rule will specify only fees the committee will collect from applicants for the practical examination that it administers. Examination charges assessed by the third party administrator for the required written examination will continue to be assessed by, and paid directly to, the examination administrator. The amended rule will also separate the practical examination fees for an initial examination for \$100 and a retake examination for \$125, which will assess fees more equitably among applicants according to which examinations they are actually required to take for licensure and make retake practical examination fees proportionate to that portion of the examination being retaken. Separating the fees in this manner will also allow for greater flexibility in examination administration.

Additionally, §141.6 will establish a fee for issuing a verification letter for a permit or license, which will increase consistency across professional licensing programs administered by, or with boards administratively attached to, the department, many of which contain fees for licensure verification letters, and will cover administrative and overhead costs associated with producing a licensure verification letter when online verification does not meet an individual's needs.

The amendments to §141.9 are proposed to improve consistency in terminology used within the chapter.

The amendment to §141.11 is proposed to reflect the spelling variant, i.e., "judgments," that generally predominates in the United States.

The amendments to §141.13 are proposed for consistency with the requirements of Texas Occupations Code, §55.002, and to reflect more specifically certain application requirements.

The amendments to §141.16 revise the title of the rule, correct the use of acronyms according to whether they are subsequently re-used in the section, and omit subsection (e), which has been moved to §141.17.

The amendments to §141.17(i) incorporate text moved from §141.16, with related language revisions to improve consistency and correct internal references.

The amendment to §141.18 is proposed to improve consistency in terminology used within the chapter.

The amendments to §141.20 are proposed to provide additional information to the complainant in an informal conference notice.

The amendments to §141.28 are proposed to comply with SB 162 and HB 2254, relating to requirements for licensure of military service members, military veterans, and military spouses.

New §141.30 is proposed to be jointly adopted with the State Board of Examiners for Speech-Language Pathology and Audiology to establish requirements for the fitting and dispensing of hearing instruments by telepractice, as required by SB 312.

New §141.31 is proposed to establish procedures relating to a petition for rulemaking.

FISCAL NOTE

Stewart Myrick, Interim Executive Director, has determined that for each year of the first five years the sections are in effect, there will be fiscal implications to state government as a result of enforcing or administering the sections as proposed. The effect on state government will be an estimated net decrease in state revenue of approximately \$4,200 per year. The \$100 fee collected by the committee for the initial practical examination under the amended rule will be consistent with the amount it has historically received back from the third party administrator of the written examination for the practical portion of the required licensure examination administered by the committee. The separation of the initial and retake examination fees for the practical examination will result in an estimated decrease in state revenue of approximately \$5,000 per year, based on an average of 40 license applicants who will have to retake the practical examination per year at the proposed retake examination fee of \$125 for the practical examination, rather than at the full examination fee of \$250 paid under existing rule if someone has to retake only the practical examination, but will reduce the cost differential between the initial and retake practical examination for applicants retaking the examination.

Partially offsetting this decrease is an estimated increase in revenue to the state by a rounded estimate of \$800 per year. The estimated increase is based on an average of 16 licensees per year who will be required to pay a late fee for the renewal of their licenses. Under §141.13(c)(10) and (11) (relating to Renewal of License), which is based on Texas Occupations Code, §402.301(d)(Relating to License Renewal), and not proposed for amendment, late renewal fees are charged at either half of, or an amount equal to, the amount of the fee for the examination required for licensure, which includes both a written and practical component. The combined cost for the applicant of the required written and practical examination is anticipated to be \$325, consisting of an anticipated charge of \$225 by the third party written examination administrator and the \$100 to be assessed under the amended rule for the practical portion of the required licensure examination administered by the committee. This is a cost increase of \$75 over the examination fee of \$250 specified under existing rule for the required examination. The rounded estimate for the increase in state revenue from late renewal fees, which is tied to the fee for the examination required for licensure, is \$800, based on the average number of licensees who will be required to pay a late renewal fee, apportioned between the estimated number of licensees required to pay the full anticipated written and practical examination fee total and those paying half that total, depending on the period of time by which the renewal application is late.

Given the historically low volume of requests for license verification letters, any gain of revenue from the implementation of the fee is not expected to significantly affect the estimated decreases in revenue. Furthermore, the decrease in revenue to the committee for its practical examination administration, based on separating the initial and retake fee for the practical examination will not prevent the committee from producing sufficient revenue to cover the costs of administering the licensing and regulatory program for fitters and dispensers of hearing instruments.

Implementation of the proposed amendments and new rules will not result in any fiscal implications for local governments.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Mr. Myrick has also determined that there will be no adverse economic impact to small businesses or micro-businesses required to comply with the sections as proposed. This was determined by interpretation of the rules that small businesses and micro-businesses will not be required to alter their business practices in order to comply with the sections.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

There are anticipated economic costs to persons who are required to comply with the sections as proposed, which will vary by individual applicant or licensee. Licensees who request a written verification of their license, which is a rare occurrence, will be required to remit \$10.

Initial licensure examination is expected to cost applicants approximately \$75 more in the aggregate, due to separation of payment for the initial written and practical examinations. The \$100 the committee has historically received back from the third party administrator from the total examination fee of \$250 specified under existing rule and paid by applicants to the third party written examination administrator will not increase, but the third party administrator is expected to charge \$225 for the written portion of the examination, resulting in an aggregate increase in cost of \$75 to the applicant to take both the written and practical examinations required for licensure. Retaking both the written and practical examinations, for which applicants will separately pay the third party administrator for the written examination and the committee, as specified in the amended rule, for the retake practical examination, will also increase the applicants' cost, but having to retake both portions of the examination is expected to be a rare occurrence. Retaking either the written or practical examination only, which is more common, is expected to result in a cost savings to applicants in either case, since they will pay only for the exam portion they are required to retake. Retaking only the practical examination, which the committee administers, will save applicants \$125 due to the separation of practical examination fees from written examination fees under the proposed amendments to §141.6 (relating to Application Procedures). Licensees who submit a renewal application less than 90 days after the expiration of their license are expected to have to pay a late fee of \$162.50, based upon half of the combined cost of the written and practical portions of the examination required for licensure, and licensees who submit a renewal application more than 90 days but less than two years after the expiration of their license will have to pay a late fee of \$325, based upon that full examination cost. These late renewal fees for applicants under the amended rule constitute an increase of \$37.50 and \$75, respectively, from late fees under current rules. The aggregate cost or savings to individual applicants or licensees required to comply with the sections as proposed will vary according to which fees apply to the individual in a given year. There is no anticipated impact on local employment.

PUBLIC BENEFIT

Mr. Myrick has also determined that for each year of the first five years the sections are in effect, the public will benefit from adoption of the proposed rule amendments and new rules. The public benefit anticipated as a result of enforcing or administering the sections will be to ensure the effective regulation of licensed hearing instrument dispensers, apprentice permit holders, and

temporary training permit holders in Texas, which will protect and promote public health, safety, and welfare. In addition, adoption of the proposed rule amendments, and new rules will facilitate the occupational licensing of applicants with applicable military experience and of qualified military spouses.

REGULATORY ANALYSIS

The committee has determined that this proposal is not a “major environmental rule” as defined by Government Code, §2001.0225. “Major environmental rule” is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

TAKINGS IMPACT ASSESSMENT

The committee has determined that the proposed rules do not restrict or limit an owner’s right to his or her property that would otherwise exist in the absence of government action and, therefore, do not constitute a taking under Government Code, §2007.043.

PUBLIC COMMENT

Comments on the proposal may be submitted to Stewart Myrick, Interim Executive Director, State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments, Mail Code 1982, P.O. Box 149347, Austin, Texas 78714-9347. Comments may also be sent through email to fdhi@dshs.state.tx.us. Please write “Comments on Proposed Rules” in the subject line. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the proposed rules have been reviewed by legal counsel and found to be within the state agencies’ legal authority to adopt.

STATUTORY AUTHORITY

The amendments and new rules are proposed under Texas Occupations Code, §402.102, which authorizes the committee, with the approval of the Executive Commissioner of the Health and Human Services Commission, to adopt procedural rules necessary for the performance of the committee’s duties; §402.1023, which requires the committee and the State Board of Examiners for Speech-Language Pathology and Audiology, with the assistance of the department, to jointly adopt rules to establish requirements for the fitting and dispensing of hearing instruments by the use of telepractice; and §402.354, which authorizes the committee to adopt rules consistent with those joint rules, including rules that establish the qualifications and duties of license holders who use telepractice; under Texas Occupations Code, Chapter 55, which provides certain rulemaking authority and requirements for state licensing agencies; and under Government Code

§2001.051, which requires that the committee adopt rules governing the form and procedure for petitioning the committee for the adoption of rules.

The amendments and new rules affect Texas Occupations Code, Chapters 55 and 402; and Government Code Chapter 2001.

Legend: (Proposed Amendments)

Single Underline = Proposed new language

[Bold print and brackets] = Current language proposed for deletion

Regular Print = Current language

(No change.) = No changes are being considered for the designated subdivision

§141.2. Definitions. The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) - (4) (No change.)

(5) Apprentice permit--A permit issued by the committee to a person who meets the qualifications established by [requirements of] Texas Occupations Code, §402.207 and this chapter, and which authorizes the permit holder to fit and dispense hearing instruments under appropriate supervision from a person who holds a current, renewable license to fit and dispense hearing instruments without supervision under Texas Occupations Code, Chapter 401, which does not include an individual licensed under §401.311 or §401.312, or under Texas Occupations Code, Chapter 402.

(6) - (18) (No change.)

(19) Manufacturer--The term includes a person who applies to be a continuing education sponsor who is employed by, compensated by, or represents an entity, business, or corporation engaged in any of the activities described in this paragraph. An entity, business, or corporation that:

(A) - (C) (No change.)

[(D) is engaged in assembling hearing instruments for sale to the public;]

[(D) [(E)] is a subsidiary of, or held by, an entity that is engaged in manufacturing, producing, or assembling hearing instruments as described above;

[(E) [(F)] holds an entity, business, or corporation engaged in manufacturing, producing, or assembling hearing instruments as described above; or

[(F) [(G)] serves as a buying group for an entity, business, or corporation engaged in manufacturing, producing, or assembling hearing instruments as described above.

(20) - (28) (No change.)

(29) Temporary training permit--A permit issued by the committee to a person who meets the qualifications established by Texas Occupations Code, Chapter 402, Subchapter F, and this chapter, to authorize the permit holder [persons authorized] to fit and dispense hearing instruments only under the direct or indirect supervision, as required and as appropriate, of a person who holds a current, renewable [valid] license to fit and dispense hearing instruments without supervision under Texas Occupations Code, Chapter 401, which does not include [or

402, other than] an individual licensed under §401.311 or §401.312, or under Texas Occupations Code, Chapter 402 [and meets the qualifications established by Texas Occupations Code, §402.255 and this chapter].

(30) - (32) (No change.)

§141.3. The Committee.

(a) - (b) (No change.)

(c) Agendas.

(1) The executive director shall be responsible for preparing and submitting an agenda to each member of the board prior to each meeting which includes items requested by members, items required by law, and other matters of committee business which have been approved for discussion by the presiding officer [president].

(2) (No change.)

(d) Minutes.

(1) The minutes of a committee meeting are official only when affixed with the original signatures of the presiding officer [president] and the executive director.

(2) - (3) (No change.)

(e) - (m) (No change.)

§141.6. Application Procedures.

(a) - (e) (No change.)

(f) The fees for administering the Act and this chapter shall be as follows:

(1) (No change);

(2) initial practical examination fee--\$100 [**\$250**];

(3) retake practical examination fee--\$125;

(4) [(3)] apprentice permit--\$205;

(5) [(4)] licensure fee--\$205;

(6) [(5)] a license issued or renewed for a one-year term--\$205;

(7) [(6)] a license issued or renewed for a two-year term--\$405;

(8) [(7)] duplicate document fee--\$25;

(9) [(8)] continuing education sponsor fee--\$500 annually;

(10) permit or license verification letter--\$10;

(11) [(9)] reinstatement fee for a license that was suspended for failure to pay child support--\$55; and

(12) [(10)] criminal history evaluation letter fee--\$50.

§141.9. Issuance of Licenses.

(a) (No change.)

(b) License certificate. Upon receiving the licensure form and fee, the committee shall issue a license certificate which indicates the licensee's name and license number.

(1) Regular licenses shall bear the signature of the committee presiding officer **[president]**.

(2) Temporary training permits and apprentice permits shall bear the signatures of the committee presiding officer **[president]**.

(3) (No change.)

(c) - (d) (No change.)

§141.11. Filing of a Bond.

(a) A sole proprietor, partnership, corporation, or other legal entity engaged in the fitting and dispensing of hearing instruments shall file a bond or a surety in lieu of a bond in the amount of \$10,000 with the committee conditioned on the promise to pay all:

(1) (No change.)

(2) judgments **[judgements]** that the sole proprietor, partnership, corporation, or other legal entity may be required to pay for negligently or improperly dispensed hearing instruments or for breaching a contract relating to the dispensing of hearing instruments.

(b) - (e) (No change.)

§141.13. Renewal of License.

(a) General.

(1) - (2) (No change.)

(3) Each person who holds a regular license is responsible for renewing the license and shall not be excused from paying late renewal fees or renewal penalty fees, unless the individual

establishes to the satisfaction of the committee or its staff or designee that the individual failed to renew the license in a timely manner because, on the deadline for timely submission of a renewal application, the individual was on active duty in the United States armed forces serving outside of Texas.

(4) The committee shall deny the renewal of the license of a licensee who is in violation of Texas Occupations Code, §402.501 [(Act)] or this chapter at the time of application for renewal.

(5) A person whose license has expired shall return his or her license certificate to the committee office.

(6) - (9) (No change.)

(b) (No change.)

(c) License renewal.

(1) (No change.)

(2) A paper or electronic license renewal form shall be made available to licensees eligible for renewal. The form shall require the licensee to provide:

(A) (No change.)

(B) telephone numbers; **[and]**

(C) information regarding continuing education that has been completed; and

(D) information regarding calibration of all testing equipment.

(3) - (16) (No change.)

§141.16. Conditions of Sales. **[Condition of Sale.]**

(a) Compliance with other state and federal regulations.

(1) A licensee or permit holder shall adhere to the Federal Food and Drug Administration regulations in accordance with 21 Code of Federal Regulations [(CFR)] §801.420 and §801.421.

(2) - (4) (No change.)

(b) Audiometers and audiometric testing devices shall meet the current standards of the American National Standards Institute (ANSI) or the International Electrotechnical Commission [(IEC)].

(c) Audiometric testing not conducted in a stationary acoustical enclosure.

(1) A notation shall be made on the hearing test if testing was not done in a stationary acoustical enclosure and sound-level measurements must be conducted at the time of the testing to ensure that ambient noise levels meet permissible standards for testing threshold to 20 dB based on the most current ANSI [**American National Standards Institute**] “ear covered” octave band criteria for Permissible Ambient Noise Levels During Audiometric Testing, or the test environment shall have a maximum allowable ambient noise level of 42 dBA.

(2) (No change.)

(d) (No change.)

[(e) Committee-Ordered Refund. The committee may order a license holder to pay a refund to a consumer who returns a hearing instrument during the 30-day trial period described in the Act and in this section.]

§141.17. Complaints and Violations.

(a) - (h) (No change.)

(i) Committee-Ordered Refund. The committee may order a licensee or permit holder to pay a refund to a consumer who returns a hearing instrument(s) during the 30-day trial period described in the Act and in this chapter.

§141.18. Formal Hearings.

(a) - (g) (No change.)

(h) Final orders or decisions.

(1) - (2) (No change.)

(3) All final orders shall be signed by the presiding officer [**president**] of the committee; however, interim orders may be issued by the Administrative Law Judge.

(4) (No change.)

(i) - (j) (No change.)

§141.20. Informal Disposition.

(a) - (e) (No change.)

(f) The notice of the conference shall be sent to the complainant at his or her last known address or personally delivered to the complainant. The complainant shall be informed that the complainant and the licensee [**he or she**] may appear and testify or that either [**he or she**] may submit a written statement for consideration at the conference.

(g) - (w) (No change.)

§141.28. Licensing of Military Service Members, Military Veterans, and Military Spouses [of **Members of the Military**].

(a) This section sets out licensing procedures for military service members, military veterans, and military spouses required under Occupations Code, Chapter 55 (relating to Licensing of Military Service Members, Military Veterans, and Military Spouses). For purposes of this section: **[the alternative license procedure for military spouse required under Occupations Code, Chapter 55 (relating to License While on Military Duty and for Military Spouse).**]

(1) “Military service member” means a person who is currently serving in the armed forces of the United States, in a reserve component of the armed forces of the United States, including the National Guard, or in the state military service of any state.

(2) “Military spouse” means a person who is married to a military service member who is currently on active duty.

(3) “Military veteran” means a person who has served in the army, navy, air force, marine corps, or coast guard of the United States, or in an auxiliary service of one of those branches of the armed forces.

(b) An applicant shall provide documentation of the applicant’s status as a military service member, military veteran, or military spouse. Acceptable documentation includes, but is not limited to, copies of official documents such as military service orders, marriage licenses, and military discharge records. The application of a person who fails to provide documentation of his or her status shall not be processed under the requirements of this section.

(c) Upon request, an applicant shall provide acceptable proof of current licensure issued by another jurisdiction. Upon request, the applicant shall provide proof that the licensing requirements of that jurisdiction are substantially equivalent to the licensing requirements of this state.

(d) The committee’s authority to require an applicant to undergo a criminal history background check, and the timeframes associated with that process, are not affected by the requirements of this section.

(e) For an application for a license submitted by a verified military service member or military veteran, the applicant shall receive credit towards any licensing requirements, except an examination requirement, for verified military service, training, or education that is relevant to the occupation, unless he or she holds a restricted license issued by another jurisdiction or if he or she has an unacceptable criminal history as described by the Act and this chapter.

(f) An applicant who is a military spouse who holds a current license issued by another jurisdiction that has substantially equivalent licensing requirements shall complete and submit an application form and fee. The committee shall issue a license to a qualified applicant who holds such a license as soon as practicable and the renewal of the license shall be in accordance with subsection (i) of this section.

(g) In accordance with Texas Occupations Code, §55.004(c), the executive director may waive any prerequisite to obtaining a license after reviewing the applicant's credentials and determining that the applicant holds a license issued by another jurisdiction that has licensing requirements substantially equivalent to those of this state.

(h) A military spouse who within the five years preceding the application date held the license in this state that expired while the applicant lived in another state for at least six months is qualified for licensure based on the previously held license, if there are no unresolved complaints against the applicant and if there is no other bar to licensure, such as criminal background or non-compliance with a committee order.

(i) If the committee issues an initial license to an applicant who is a military spouse in accordance with subsection (f) of this section, the committee shall assess whether the applicant has met all licensing requirements of this state by virtue of the current license issued by another jurisdiction. The committee shall provide this assessment in writing to the applicant at the time the license is issued. If the applicant has not met all licensing requirements of this state, the applicant must provide proof of completion at the time of the first application for license renewal. A license shall not be renewed, shall be allowed to expire, and shall become ineffective if the applicant does not provide proof of completion at the time of the first application for licensure renewal.

[(b) The spouse of a person serving on active duty as a member of the armed forces of the United States who holds a current license issued by another state that has licensing requirements shall complete and submit an application form and fee to the department. In accordance with Occupations Code, §55.004(c), the executive director may waive any prerequisite to obtaining a license after reviewing the applicant's credentials and determining that the applicant holds a license issued by another jurisdiction that has licensing requirements substantially equivalent to those of this state.]

[(c) The spouse of a person serving on active duty as a member of the armed forces of the United States who within the five years preceding the application date held the license in this state that expired while the applicant lived in another state for at least six months is qualified for licensure based on the previously held license, if there are no unresolved complaints against the applicant and if there is no other bar to licensure, such as criminal background or non-compliance with a committee order.]

§141.30. Joint Rule Regarding the Fitting and Dispensing of Hearing Instruments by Telepractice.

(a) Pursuant to Texas Occupations Code, §402.1023 and §401.2022, the Committee and the State Board of Examiners for Speech Language Pathology and Audiology, with the assistance of the department, are to adopt rules jointly to establish requirements for the fitting and dispensing of hearing instruments through the use of telepractice. This section contains joint rules that set forth the requirements for the fitting and dispensing of hearing instruments through the use of telepractice.

(b) Definitions. Unless the context clearly indicates otherwise, the following words and terms, when used in this section, shall have the following meanings:

(1) Acts--Texas Occupations Code, Chapter 402, relating to Hearing Instrument Fitters and Dispensers, and Chapter 401, relating to Speech-Language Pathologists and Audiologists.

(2) Board--The State Board of Examiners for Speech-Language Pathology and Audiology.

(3) Client--A consumer or proposed consumer of services.

(4) Client site--The site at which the client is physically located.

(5) Facilitator--The individual at the client site who assists with the delivery of telehealth services.

(6) Hearing instrument--Any wearable instrument or device designed for, or represented as, aiding, improving or correcting defective human hearing. This includes the instrument's parts and any attachment, including an earmold, or accessory to the instrument. The term does not include a battery or cord.

(7) Provider--An individual who holds a current, renewable, unrestricted license under Texas Occupations Code, Chapter 402, that authorizes the individual to fit and dispense hearing instruments without supervision; an individual who holds a current, renewable, unrestricted license under Texas Occupations Code, §401.302; or an individual who holds an audiology intern license under Texas Occupations Code, §401.311.

(8) Provider site--The physical location of the provider of telehealth services which is distant or remote from the client site.

(9) Telecommunications--Interactive communication at a distance by concurrent two-way transmission, using telecommunications technology, of information, including, without limitation, sound, visual images, and/or computer data, between the client site and the provider site, and required to occur without a change in the form or content of the information, as sent and received, other than through encoding or encryption of the transmission itself for purposes of and to protect the transmission.

(10) Telecommunications technology--Computers and equipment, other than telephone, email or facsimile technology and equipment, used or capable of use for purposes of telecommunications. For purposes of this section, the term includes, without limitation:

(A) compressed digital interactive video, audio, or data transmission;

(B) clinical data transmission using computer imaging by way of still-image capture and storage and forward; and

(C) other technology that facilitates the delivery of telehealth services.

(11) Telehealth services--The fitting and dispensing of hearing instruments through telepractice to a client who is physically located at a site other than the site where the provider is located.

(12) Telepractice--The use of telecommunications technology for the fitting and dispensing of hearing instruments.

(c) Unless otherwise legally authorized to do so, an individual shall not render telehealth services from the State of Texas or to a client in the state of Texas, unless the individual qualifies as a provider as that term is defined in this section and renders only those telehealth services that are within the course and scope of the provider's licensure and competence, and delivered in accordance with the requirements of that licensure and pursuant to the terms and conditions set forth in this section.

(d) The provider shall use only telecommunications technology that meets the definition of that term, as defined in this section, to render telehealth services. Modes of communication that do not utilize such telecommunications technology, including telephone, facsimile, and email, may be used only as adjuncts.

(e) Subject to the requirements and limitations of this section, a provider may utilize a facilitator at the client site to assist the provider in rendering telehealth services.

(f) The provider shall be present at the provider site and shall be visible and audible to, and able to see and hear the client and the facilitator via telecommunications technology in synchronous, real-time interactions, even when receiving or sending data and other telecommunication transmissions in carrying out the telehealth services. The provider is responsible for the actions of the facilitator and shall monitor the client and oversee and direct the facilitator at all times during the telehealth session.

(g) The provider of telehealth services, prior to allowing a facilitator to assist the provider in rendering telehealth services, shall verify and document the facilitator's qualifications, training, and competence in each task the provider directs the facilitator to perform at the client site, and in the methodology and equipment the facilitator is to use at the client site.

(h) The facilitator may perform at the client site only the following tasks:

(1) those physical, administrative, and other tasks for which the provider has trained the facilitator in connection with the fitting or dispensing of hearing instruments for which no form of license, permit, authorization or exemption under either of the Acts is required; and

(2) a task for which the facilitator holds and acts in accordance with any license, permit, or other form of authorization or exemption required under either of the Acts.

(i) A provider shall not render telehealth services to a client in those situations in which the presence of a facilitator is required for safe and effective service to the client and no qualified facilitator is available to the client during the telepractice session.

(j) The scope, nature, and quality of the telehealth services provided, including the assistance provided by the facilitator, shall be commensurate with the services the provider renders in person at the same physical location as the client.

(k) The provider shall not render telehealth services unless the telecommunications technology and equipment located at the client site and at the provider site are appropriate to the

telehealth services to be rendered; are properly calibrated and in good working order; and are of sufficient quality to allow the provider to deliver equivalent fitting and dispensing service and quality to the client as if those services were provided in person at the same physical location. The provider shall only utilize telecommunications technology and other equipment for the provider's telepractice which the provider is competent to use.

(l) The initial professional contact between the provider and client shall be at the same physical location.

(m) Providers and facilitators involved in the provider's delivery of telehealth services shall comply with all laws, rules, and regulations governing the maintenance of client records, including client confidentiality requirements. Documentation of telehealth services shall include documentation of the date and nature of services performed by the provider by telepractice and of the assistive tasks of the facilitator.

(n) Except to the extent it imposes additional or more stringent requirements, this section does not affect the applicability of any other requirement or provision of law to which an individual is otherwise subject under this chapter or other law.

§141.31. Petition for Adoption of a Rule.

(a) To request adoption of a rule, a person shall submit a written petition for adoption of the rule to the committee. The petition shall contain the following:

(1) the petitioner's name, address, and telephone number;

(2) a brief explanation of, and justification for, the proposed rule;

(3) the text of the proposed rule prepared in a manner to indicate the words to be added or deleted from the current text, if any;

(4) a statement of the statutory or other authority or mandate under which the rule is to be adopted; and

(5) a statement of the public benefit anticipated as a result of adopting the rule or the anticipated injury or inequity which could result from the failure to adopt the proposed rule.

(b) The petition shall be submitted to the executive director.

(c) The executive director shall submit a petition that complies with subsection (a) of this section to the committee for its consideration.

(d) Within 60 days after the executive director's receipt of a complete petition, the committee shall either:

(1) deny the petition;

(2) initiate rulemaking proceedings in accordance with the Administrative Procedure Act;

or

(3) deny parts of the petition and initiate rulemaking proceedings on parts of the petition.

(e) If the committee denies all or part of the petition, the executive director, within 60 days after receipt of the petition, shall give the petitioner written notice of the board's denial, including the reason for the denial.

(f) If the committee initiates rulemaking proceedings, the version of the rule which the committee proposes or adopts may differ from the version proposed by the petitioner.

(g) All petitions for the adoption of a rule shall be presented to and decided by the committee in accordance with the provisions of this section.