

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 243 Hearing Aid Specialists  
**SPONSOR(S):** Kendrick and others  
**TIED BILLS:** **IDEN./SIM. BILLS:** SB 372

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Health Care Regulation Committee	11 Y, 0 N	Bell	Mitchell
2) Elder & Long-Term Care Committee	7 Y, 0 N	Walsh	Walsh
3) Health & Families Council		Bell	Moore
4) _____	_____	_____	_____
5) _____	_____	_____	_____

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### SUMMARY ANALYSIS

HB 243 excludes licensed hearing aid specialists from the requirement that a certain written statement of a patient's right to refuse or cancel payment, or be reimbursed for payment for other treatment or services, must accompany the advertisement of free, discounted, or reduced fee services.

The bill takes effect July 1, 2006.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

**Provide Limited Government** – The bill removes a regulation that requires hearing aid specialists to make a certain disclosure in their advertisements when advertising services that are free or provided at a discounted or reduced fee.

#### B. EFFECT OF PROPOSED CHANGES:

##### BACKGROUND

In Florida, there are currently 831 licensed hearing aid specialists and 847 licensed audiologists.<sup>1</sup>

Hearing Aid Specialists. Hearing aid specialists are regulated under Part II of Chapter 484, F.S. Generally hearing aid specialists fit and sell hearing amplification systems to individuals in a retail establishment. Some of their duties include conducting hearing tests, interpreting auditory test results, and selecting, fitting, and modifying hearing amplification systems for individuals.

The Department of Health licenses<sup>2</sup> each applicant that the Board of Hearing Aid Specialists certifies:

- Is of good moral character;
- Is 18 years of age;
- Is a graduate of an accredited high school or its equivalent;
- Either:
  - Meets the requirements of the Board of Hearing Aid Specialist training program; or
  - Holds a valid, current license as a hearing aid specialist or its equivalent from another state and has been actively practicing in such capacity for at least 12 months; or
  - Is currently certified by the National Board for Certification in Hearing Instrument Sciences and has been actively practicing for at least 12 months.
- Has passed the licensure examination, which is the International Licensing Examination (ILE) for the Hearing Instrument Dispenser;
- Has demonstrated knowledge of state laws and rules relating to the fitting and dispensing of hearing aids.

Hearing aid specialists are required to complete continuing education requirements as a condition of license renewal.<sup>3</sup>

Audiologists. Audiologists are regulated under Part I of Chapter 468, F.S. The practice of audiology includes the assessment of hearing and balance. Audiologists do research on hearing loss, tinnitus, and balance system dysfunction. Audiologists also select, fit, and dispense amplification systems such as hearing aids; work to prevent hearing loss through providing and fitting protective devices; provide consultation on the effects of noise on hearing; and provide consumer education.

The Department of Health licenses<sup>4</sup> each audiologist applicant that the Board of Speech-Language Pathology and Audiology certifies:

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<sup>1</sup> Source: Florida Department of Health Medical Quality Assurance Licensee Data Center: Hearing Aid Specialist and Audiologist Data Downloads as of February 9, 2006. Figures cited are active licensees only.

<sup>2</sup> S. 484.045(2), F.S.

<sup>3</sup> S. 484.047(4), F.S.

<sup>4</sup> S. 468.1185(2), F.S.

- Holds a Master's degree or is enrolled in a Doctoral degree program from an accredited college or university with a major emphasis in the area of audiology, including completion of 60 semester hours, 30 of which must be at the graduate level;
- Has completed 300 clock hours in supervised clinical practice;
- Has completed nine months of full-time professional employment;
- Has passed the national examination;
- Has completed an education course on HIV/AIDS.<sup>5</sup>

Audiologists are required to complete continuing education requirements biennially as a condition of license renewal.<sup>6</sup>

Federal Regulations. Hearing aid devices are regulated by federal law.<sup>7</sup> Hearing aid specialists and audiologists are required to comply with federal regulations relating to conditions of sale, including:

- Medical evaluation requirements;
- Waiver of the medical evaluation requirements;
- Availability of hearing aid user instructional brochures; and
- Recordkeeping.

State Regulations. In addition to the federal regulations, state law contains specific requirements relating to the sale of hearing aids.

- **Thirty Day Trial Period:** Both hearing aid specialists and audiologists<sup>8</sup> are required to provide the buyer of a hearing aid with written notice of a 30-day trial period and money back guarantee. The guarantee must permit the purchaser to cancel the purchase for a valid reason.<sup>9</sup> If the hearing aid must be repaired, remade, or adjusted during the 30-day trial period, the running of the 30-day trial period is suspended one day for each 24-hour period that the hearing aid is not in the purchaser's possession. A repaired, remade, or adjusted hearing aid must be claimed by the purchaser within three working days after notification of availability. The running of the 30-day trial period resumes on the day the purchaser reclaims the repaired, remade, or adjusted hearing aid or on the fourth day after notification of availability.
- **Itemization of Prices:** Hearing aid specialists and audiologists<sup>10</sup> must provide an itemized listing of prices at the request of prospective hearing aid purchasers. This list must provide separate prices for each service component and each product.
- **Cancellation by Medical Authorization:** Hearing aid purchasers have the right<sup>11</sup> to their money back if a licensed physician, who is board-certified in otolaryngology or internal medicine or who is a licensed family practice physician, certifies in writing that the purchaser has a hearing impairment that contraindicates the use of a hearing aid or that will not be improved by the use of a hearing aid. The purchaser must give notice to the seller via certified mail within 60 days following the date of delivery of the hearing aid in order to effectuate the guarantee.

Economics of Health Care Regulation.<sup>12</sup> Economists argue that the regulation of health care usually involves striking a balance between patient safety and quality of care, and the cost and availability of services. Regulating quality is not without cost, and it is not without an effect on the market for health

<sup>5</sup> S. 468.1201, F.S.

<sup>6</sup> S. 468.1195, F.S.

<sup>7</sup> See 21 C.F.R. 801.420, 21 C.F.R. 801.421

<sup>8</sup> Ss. 484.0512 and 468.1246, F.S., respectively.

<sup>9</sup> A "valid reason" is defined as "failure by the purchaser to achieve satisfaction from use of the hearing aid(s), so long as the hearing aid(s) is returned to the seller within the 30-day trial period in good working condition." See Rules 64B6-6.001(2) and 64B30-8.008 (3), F.A.C.

<sup>10</sup> Pursuant to ss. 484.051 and 468.1245, F.S., respectively.

<sup>11</sup> S. 484.0513, F.S., as applies to hearing aid specialists and s. 468.1255, F.S., as applies to audiologists.

<sup>12</sup> This discussion is derived from a presentation to the House Committee on Health Care Regulation by Steve Ullman, Ph.D., University of Miami, on *Health Care Issues Associated with Regulation*, March 2005.

care services. Regulations that increase the cost of providing health care may lead to increased prices, a decrease in quantity, and hurt the bottom line of the supplier of services, thus, limiting access to health care. If regulations increase the costs of health care too much, consumers may drop out of the market. The decrease in demand may then cause a chain reaction so that health care suppliers drop out of the market, which would limit access to health care (the supply). Even a policy aimed at increasing demand for service, may be constrained by regulatory policies that limit the ability for suppliers to respond, so that the effect may be a large increase in price and a smaller increase in quantity of services provided.

### **Effect of Proposed Bill**

As noted, some laws relating to the sale of hearing aids apply equally to hearing aid specialists and to audiologists. However, the following disclosure, required of many professions<sup>13</sup> when advertising services that are free or provided at a discounted or reduced fee ---

THE PATIENT AND ANY OTHER PERSON RESPONSIBLE FOR PAYMENT HAS A RIGHT TO REFUSE TO PAY, CANCEL PAYMENT, OR BE REIMBURSED FOR PAYMENT FOR ANY OTHER SERVICE, EXAMINATION, OR TREATMENT THAT IS PERFORMED AS A RESULT OF AND WITHIN 72 HOURS OF RESPONDING TO THE ADVERTISEMENT FOR THE FREE, DISCOUNTED FEE, OR REDUCED FEE SERVICE, EXAMINATION, OR TREATMENT.

--- is required to be made by hearing aid specialists, but not by audiologists.

Hearing aid specialists and audiologists often work in close contact with one another, and clinics frequently employ both types of professionals. Although audiologists are licensed to perform many more services than hearing aid specialists, one of an audiologist's primary responsibilities is dispensing of hearing aids. As a practical matter, clinics that employ both hearing aid specialists and audiologists include the disclosure in their advertisements when advertising services that are free or provided at a discounted or reduced fee, even though pursuant to s. 456.062, F.S., such disclosure is not required of audiologists.

HB 243 amends s. 456.062, F.S., to exclude licensed hearing aid specialists from the requirement to publish the disclosure statement with all advertisements of free, discounted, or reduced fee services.

#### **C. SECTION DIRECTORY:**

**Section 1.** Amends s. 456.062, F.S., to exclude licensed hearing aid specialists from having to publish a disclosure statement with all advertisements of free, discounted, or reduced fee services.

**Section 2.** Provides an effective date of July 1, 2006.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

#### **1. Revenues:**

None.

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<sup>13</sup> Currently 15 other licensed professions, including naturopaths, dentists, and nurses, are required to make the disclosure when advertising services that are free or provided at a reduced or discounted fee. See s. 456.062, F.S.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Indeterminate. HB 243 may lower advertising costs for hearing aid specialists and audiologists who employ hearing aid specialists. Hearing aid specialists and audiologists may choose to pass on their cost savings to customers.

D. FISCAL COMMENTS:

None.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to spend funds or take action requiring the expenditure of funds. This bill does not reduce the percentage of state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

No additional rulemaking authority is required to implement the provisions of this bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The Board of Hearing Aid Specialists has stated that audiologists, who also sell hearing aids, are not subject to this same advertising disclosure requirement in s. 456.062, F.S. Placing hearing aid specialists in this category with other health professionals, when they also must offer trial periods, refunds and money back guarantees, may be duplicative or unnecessary.

### IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES