

State of Utah
Administrative Rule Analysis
Revised May 2020

OAR File No. 53102

Date filed: 10-6-2020

NOTICE OF PROPOSED RULE

TYPE OF RULE: New ___; Amendment ; Repeal ___; Repeal and Reenact ___

Title No. - Rule No. - Section No.

Utah Admin. Code Ref (R no.):

R156-46a

Filing No. (Office Use Only)

Changed to Admin. Code Ref. (R no.):

R

Agency Information

1. Department: Department of Commerce
Agency: Division of Occupational and Professional Licensing
Room no.:
Building: Heber M. Wells Building
Street address: 160 East 300 South
City, state: Salt Lake City UT 84111-2316
Mailing address: PO Box 146741
City, state, zip: Salt Lake City UT 84114-6741
Contact person(s):
Name: Phone: Email:
Jana Johansen 801-530-6621 janajohansen@utah.gov

Please address questions regarding information on this notice to the agency.

General Information

2. Rule or section catchline:

Hearing Instrument Specialist Licensing Act Rule

3. Purpose of the new rule or reason for the change (If this is a new rule, what is the purpose of the rule? If this is an amendment, repeal, or repeal and reenact, what is the reason for the filing?):

The proposed amendments update the rule in accordance with statutory changes made by SB 23 and HB 10 in the 2020 Legislative General Session.

4. Summary of the new rule or change:

Section R156-46a-102 is amended to update a citation.

Sections R156-46a-302b and R156-46a-304: The proposed amendments remove references to the Hearing Instrument Specialists Licensing Act Board, in accordance with HB 10, which repealed Section 58-46a-201 and disbanded the Board.

Section R156-46a-302a: The proposed amendments add clarification to exam requirements.

Section R156-46a-302b: The proposed amendments make formatting changes, grammatical changes, and clarifies supervision requirements for interns.

Section R156-46a-303: The proposed amendments update citations to renewal procedures in Rule R156-1.

Section R156-46a-304: The proposed amendments make grammatical changes and clarify continuing education provisions.

Section R156-46a-502a: The proposed amendments make grammatical changes and clarify unprofessional conduct provisions.

Section R156-46a-502b: The proposed amendments make grammatical changes.

Section R156-46a-502c: The proposed change is a formatting change.

Section R156-46a-502d: The proposed change is a formatting change.

Fiscal Information

5. Aggregate anticipated cost or savings to:

A) State budget:

No state agencies will be directly or indirectly affected by this filing because the proposed amendments merely update and clarify provisions and conform the rule to statutory changes. Accordingly, the amendments are not expected to impact the state.

B) Local governments:

No local governments will be directly or indirectly affected by this filing because the proposed amendments merely update and clarify provisions and conform the rule to statutory changes.

C) Small businesses ("small business" means a business employing 1-49 persons):

There are approximately 96 small businesses in Utah owned by individuals in the hearing aid dispensing industries (NAICS 446199). No small businesses are expected to be impacted by this filing because the proposed amendments merely update and clarify provisions and conform the rule to statutory changes.

D) Non-small businesses ("non-small business" means a business employing 50 or more persons):

There are approximately 3 non-small businesses in Utah owned by individuals in the hearing aid dispensing industries (NAICS 446199). No small businesses are expected to be impacted by this filing because the proposed amendments merely update and clarify provisions and conform the rule to statutory changes.

E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an **agency**):

In Utah there are 125 licensed hearing instrument specialists and 27 licensed hearing instrument interns, but these persons are not expected to be impacted by filing because the proposed amendments merely update and clarify provisions and conform the rule to statutory changes.

F) Compliance costs for affected persons:

These amendments are not expected to impose any compliance costs on any affected persons.

G) Regulatory Impact Summary Table (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)

Regulatory Impact Table

Fiscal Cost	FY2021	FY2022	FY2023
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Cost	\$0	\$0	\$0
Fiscal Benefits			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0

H) Department head approval of regulatory impact analysis:

The head of the Department of Commerce, Chris Parker, has reviewed and approved this fiscal analysis.

6. A) Comments by the department head on the fiscal impact this rule may have on businesses:

The Division of Occupational and Professional Licensing proposes amendments to update the Hearing Instrument Specialist Licensing Act Rule in accordance with SB 23 and HB 10 in the 2020 General Legislative Session. The revisions remove

references to the now disbanded Hearing Instrument Specialist Licensing Board, clarify licensing requirements in concern to exams and obtaining hours toward licensure, and make grammatical changes relating to unprofessional conduct. Amendments are also made to update section references and make non-substantive formatting changes for clarity.

Small Businesses (less than 50 employees):

In Utah, there are approximately 96 small businesses owned by individuals in the hearing aid dispensing industries (NAICS 446199). No costs or benefits are expected for small businesses by this filing because the proposed amendments merely update and clarify provisions and conform the rule to statutory changes. Accordingly, no fiscal impact is expected for small business over and above any fiscal impact described in the Legislative fiscal notes for SB 23 and HB 10 in the 2020 General Legislative Session as these costs are either inestimable or there is no fiscal impact.

Regulatory Impact to Non-Small Businesses (50 or more employees)

In Utah, there are approximately three non-small businesses owned by individuals in the hearing aid dispensing industries (NAICS 446199). For the same reasons as for small business, this filing is not expected to generate costs or benefits as these are merely updating amendments to harmonize the rules with the statute. Any fiscal impact beyond those described in the Legislative fiscal notes for SB 23 and HB 10 in the 2020 General Legislative Session are either inestimable or there is simply no fiscal impact.

B) Name and title of department head commenting on the fiscal impacts:

Chris Parker, Executive Director

Citation Information

7. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):

Subsection 58-1-106(1)(a)	Subsection 58-1-202(1)(a)	Section 58-46a-101
Section 58-46a-304		

Incorporations by Reference Information

(If this rule incorporates more than two items by reference, please include additional tables.)

8. A) This rule adds, updates, or removes the following title of materials incorporated by references (a copy of materials incorporated by reference must be submitted to the Office of Administrative Rules; if none, leave blank):

	First Incorporation
Official Title of Materials Incorporated (from title page)	
Publisher	
Date Issued	
Issue, or version	

B) This rule adds, updates, or removes the following title of materials incorporated by references (a copy of materials incorporated by reference must be submitted to the Office of Administrative Rules; if none, leave blank):

	Second Incorporation
Official Title of Materials Incorporated (from title page)	
Publisher	
Date Issued	
Issue, or version	

Public Notice Information

9. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until (mm/dd/yyyy): 12/01/2020

B) A public hearing (optional) will be held:

On (mm/dd/yyyy): 11/16/2020	At (hh:mm AM/PM): 9:00 a.m.	At (place): Rule hearing will be held before the Division electronically only. Join with Google Meet meet.google.com/aip-ypgz-njr Join by phone (US) +1 216-352-4359 (PIN: 857010725)
---------------------------------------	---------------------------------------	---

10. This rule change MAY become effective on (mm/dd/yyyy): 12/08/2020

NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.

Agency Authorization Information

To the agency: Information requested on this form is required by Sections 63G-3-301, 302, 303, and 402. Incomplete forms will be returned to the agency for completion, possibly delaying publication in the *Utah State Bulletin*, and delaying the first possible effective date.

Agency head or designee, and title: 	Date (mm/dd/yyyy): 10/16/2020
--	---

R156. Commerce, Occupational and Professional Licensing.
R156-46a. Hearing Instrument Specialist Licensing Act Rule.
R156-46a-102. Definitions.

In addition to the definitions as used in Title 58, Chapters 1, Division of Occupational and Professional Licensing, and 46a, Hearing Instrument Specialist Licensing Act, or this rule, [~~as used in Title 58, Chapters 1 and 46a or this rule,~~] "unprofessional conduct," [~~as defined in Title 58 Chapters 1 and 46a,~~] is further defined [~~, in accordance with~~] in Subsection 58-1-203(1)(e), in Section R156-46a-502a.

R156-46a-302a. Qualifications for Licensure - Examination Requirements.

(1)(a) In accordance with Subsections 58-46a-302(1)(~~[#]d~~) and [58-46a-302.5(2)(a)]58-46a-302(2)(c), the requirements for the examination of a hearing instrument specialist and of a hearing instrument intern are defined to require a minimum score of [85]75% on [each section of]the Utah Law and Rules Examination for Hearing Instrument Specialists.

(b) If an individual's license as a hearing instrument intern expires before the individual becomes licensed as a hearing instrument specialist, the individual shall retake and pass the Utah Law and Rules Examination before the individual may reapply for licensure as a hearing instrument intern.

(2)(a) In accordance with Subsection 58-46a-302.5(1)(a), a hearing instrument intern shall obtain a passing score on each section of the International Hearing Society (IHS) Practical Examination for Hearing Instrument Interns.

(b) If a hearing instrument intern receives a failing score on any section of the exam, the intern may retake that section within 60 days. If the intern does not pass each failed section within the 60-day period, the intern shall retake the entire exam.

(3)(a) In accordance with Subsection 58-46a-302.5(2)(b), an applicant for licensure as a hearing instrument specialist shall obtain a passing score on the International Hearing Society's (IHS) International Licensing Exam (ILE).

(b) If a hearing instrument intern fails the ILE three times:

(i) the intern shall request from the Division an authorization to test before each subsequent retake of the ILE; and

(ii) the Division shall require as a condition for approval of an authorization to test that the intern and the intern's supervisor submit to the Division a written plan of study that includes appropriate subject matter to assist the intern in passing the ILE.

R156-46a-302b. Qualifications for Licensure - Internship Supervision Requirements.

In accordance with Subsection[~~s~~] 58-46a-102(7) [~~and 58-1-203(1)(b)~~], the requirements for supervision of a hearing instrument intern are defined and clarified as follows[~~-~~]:

(1) [The]A hearing instrument intern supervisor shall:

([1]a) supervise no more than one hearing instrument intern on direct supervision;

([2]b) supervise no more than two hearing instrument interns at one time;

([3]c) [~~not~~]begin an internship program [~~until~~]only after:

([a]i) the hearing instrument intern is properly licensed as a hearing instrument intern; and

([b]ii) the supervisor is approved by the Division [~~in collaboration with the Board~~]; and

([4]d) notify the Division within ten working days if an internship program is terminated.

(2) If a supervised internship program is terminated, then within 60 days of termination, the hearing instrument intern shall:

(a) obtain a new supervisor and notify the Division of the new supervised internship program; or

(b) surrender their hearing instrument intern license.

R156-46a-303. Renewal Cycle - Procedures.

(1) In accordance with Subsection 58-1-308(1), the renewal date for the two-year renewal cycle applicable to licensees under Title 58, Chapter 46a is established by rule in Section R156-1-308a.

(2) Renewal procedures shall be in accordance with Sections R156-1-308c through R156-1 308l.

R156-46a-304. Continuing Education.

In accordance with Section 58-46a-304, the continuing education requirement for renewal of licensure as a hearing instrument specialist is defined and clarified as follows:

(1) A hearing instrument specialist shall complete at least 16 hours of continuing education during each two-year renewal cycle.

(2) Continuing education courses shall be [effered] in one or more of the following [areas] topics:

(a) acoustics;

(b) nature of the ear such as [+]normal ear, hearing process, disorders of hearing[+];

(c) hearing measurement;

(d) hearing aid technology;

(e) selection of hearing aids;

(f) marketing and customer relations;

(g) client counseling;

(h) ethical practice;

(i) state laws and regulations regarding the dispensing of hearing aids; and

(j) other [~~areas deemed appropriate~~]topics approved by the Division [~~in collaboration with the Board~~].

([2]3) Continuing education courses [~~required under this section~~] shall be approved by:

(a) the American Speech-Language-Hearing Association (ASHA);

(b) the American Academy of Audiology (AAA); or

(c) the International Hearing Society (IHS). [~~Licensees shall retain copies of transcripts or certificates of completion from continuing education courses approved under this section for a period of four years, during which time the Division may audit the licensee's compliance with the requirements of this section.~~]

(4) [~~A minimum of 20 continuing education course hours shall be obtained by a hearing instrument specialist in order to have the license renewed every two years.~~]A licensee may fulfill continuing education

requirements by maintaining current National Board for Certification in Hearing Instrument Sciences (NBC-HIS) board certification.

(5) A licensee shall maintain documentation showing compliance with the requirements of this section, such as copies of transcripts or certificates of completion or of board certification, for two years from the end of the renewal period for which the continuing education is due.

R156-46a-502a. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) violating any state or federal law applicable to persons practicing as a hearing instrument specialist or hearing instrument intern;

(2) failing to perform the minimum components of an evaluation for a hearing aid as set forth in Section R156-46a-502b;

(3) dispensing a hearing aid without ~~[the purchaser having]~~:

(a) the patient having received a medical evaluation as required by Subsection 58-46-502(5) within the six-month period prior to the purchase of [a]the hearing aid; or

(b) a document signed by the purchaser being a fully informed adult waiving the medical evaluation in accordance with Food and Drug Administration (FDA) required disclosures in CFR Title 21, Section 801.421, except a person under the age of 18 years may not waive the medical evaluation;

(4) engaging in unprofessional conduct specified in Subsection 58-1-501(2)(h), including:

(a) quoting prices of competitive hearing instruments or devices without disclosing that they are not the current prices; ~~[-or to show, demonstrate, or represent]~~

(b) showing, demonstrating, or representing competitive models as being current when ~~[such is not the fact]~~ they are not; ~~[and]or~~

~~[[b]c)~~ using stalling tactics, excuses, arguing or attempting to dissuade the ~~[purchaser]~~ consumer, to ~~[avoid]~~ prevent or delay the ~~[customer]~~ consumer from exercising the 30-day right to cancel a hearing aid purchase pursuant to Subsection 58-46a-503(1); and

(5) failing to conform to the generally accepted and recognized standards and ethics of the profession including those established in the Code of Ethics of the International Hearing Society, adopted March 2009, which is hereby incorporated by reference.

R156-46a-502b. Minimum Components of an Evaluation for a Hearing Aid and Dispensing of a Hearing Aid.

(1) The minimum components of a hearing aid examination are ~~[-the- following]~~:

(a) air conduction tests at frequencies of 250, 500, 1000, 2000, and 4000 Hertz;

(b) appropriate masking if the air conduction threshold at any one frequency differs from the bone conduction threshold of the contralateral or non-test ear by 40 decibels at the same frequency;

(c) bone conduction tests at 500, 1000, and 2000 Hertz, ~~[on every- elient-]~~ with proper masking;

(d) speech audiometry by live voice or recorded voice, including speech discrimination testing, most comfortable loudness (MCL)

measurements, and ~~measurements of~~ uncomfortable levels of loudness (UCL) ~~measurements~~; and

(e) recording and interpretation of audiograms and speech audiometry and other appropriate tests for the sole purpose of determining proper selection and adaptation of a hearing aid.

(2) Only if~~when~~ the ~~above~~ procedures in Subsection (1)(a) are clearly impractical, may the licensee select ~~the selection of~~ the best instrument to compensate for the loss ~~be made~~ by trial of one or more instruments.

(3) Tests performed by a physician specializing in diseases of the ear, a clinical audiologist, or another licensed hearing instrument specialist shall be accepted if they were performed within six months prior to the dispensing of the hearing aid.

R156-46a-502c. Calibration of Technical Instruments.

The requirement in Subsection 58-46a-303(3) ~~([e]b)~~ for calibration of ~~all~~ each appropriate technical instruments used in practice is defined, clarified, and established as follows:

(1) ~~any~~ each audiometer used in the fitting of hearing aids shall be calibrated when necessary, but not less than annually;

(2) the calibration shall include to ANSI standards calibration of frequency accuracy, acoustic output, attenuator linearity, and harmonic distortion; and

(3) calibration shall be accomplished by the manufacturer, or a properly trained person, or an institution of higher learning equipped with proper instruments for calibration of an audiometer.

R156-46a-502d. Form of Written Informed Consent.

In accordance with Subsection 58-46a-502(4)(c), an agreement to provide hearing instrument specialist goods and services shall include the patient's informed consent in substantially the following form.

TABLE

ACKNOWLEDGEMENT OF INFORMED CONSENT

As a consumer of hearing instrument specialist goods or services, you are required to be informed of certain information as provided in Utah Code ~~Ann.~~ Sections 58-46a-502 and 503.

1. The list of goods and services to be provided to you include the following: (add additional lines as required)

Services:

Charge:

Goods (circle as applicable: new, used, reconditioned): Charge:

These goods (circle as applicable: are, are not) covered by a warranty or guarantee. Additional information about any warranty or guarantee is attached.

2. The licensees providing these goods and services are:

(add additional lines as required)

hearing instrument specialist:

name: license number:

hearing instrument specialist intern

name: license number:

3. The expected results of the goods and services are:

4. If the goods to be provided include a hearing instrument:

(a) Additional information is attached about hearing instruments that work with assisted listening systems that are compliant with ADA Standards for Accessible Design adopted by the United States Department of Justice in accordance with the American with Disabilities Act, 42 U.S.C. Sec. 12101 et seq.

(b) You have the right to receive a written receipt or written contract, which includes notice to you that you have a 30-day right to cancel the purchase and obtain a refund if you find the hearing aid does not function adequately for you.

(i) The 30-day right to cancel shall commence from either the date the hearing aid is originally delivered to you or the date the written receipt or contract is delivered to you, whichever is later. The 30-day period shall be tolled for any period during which the hearing aid seller, dealer, or fitter has possession or control of the hearing aid after its original delivery.

(ii) Upon exercise of the 30-day right to cancel a hearing aid purchase, the seller of the hearing aid is entitled to a cancellation fee not to exceed 15% of all fees charged to the consumer, including testing, fitting, counseling, and the purchase price of the hearing aid. The exact amount of the cancellation fee shall be stated in the written receipt or contract provided to the consumer.

5. If the goods and services provided do not substantially enhance your hearing as stated in the expected results, you are entitled to:

(a) necessary intervention to produce satisfactory recovery results consistent with the representations made above at no additional cost; or

(b) refund of the fees you paid for the hearing instrument within a reasonable period of time after finding that the hearing instrument does not substantially enhance your hearing.

I hereby acknowledge being informed of the above and consent to ~~[the~~
]receive the goods and services.

Patient's Signature and Date

KEY: licensing, hearing aids, hearing instrument specialist, hearing instrument intern

Date of Enactment or Last Substantive Amendment: ~~[August 17, 2015]~~ 2020

Notice of Continuation: November 8, 2018

Authorizing, and Implemented or Interpreted Law: 58-1-106(1)(a); 58-1-202(1)(a); 58-46a-101; 58-46a-304