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62nd Montana Legislature

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Board of Hearing Aid Dispensers Followup Review

Issues:

- Loss of audiologists as licensees (after passage of SB 132, which allowed audiologists to sell hearing aids without a separate hearing aid dispenser license) leaves the Board of Hearing Aid Dispensers with less income but still high costs. This has resulted in a $1,000 proposed licensing fee for the remaining licensees. The loss of licensing fees from 30 audiologists amounts to $13,500 (at the 2011 licensing fee of $450). The board projects 60 hearing aid dispensers will renew at a proposed higher fee of $1,000 a year. The actual number of licensees will be known June 30, the board's renewal deadline.

  High costs are due, in particular, to the number of complaints and the legal fees related to those complaints. In FY 2010 the Board of Hearing Aid Dispensers dealt with 13 new complaints filed, with 16 new complaints received in FY 2011.[1] In addition, when a board has financial or legal troubles, as the Board of Hearing Aid Dispensers has, the attention paid to the board increases. The Business Standards Division says that higher-paid managers are not part of the time distribution used to figure board costs, but it remains unclear how the higher-paid staff's time is distributed and at what level of staffing the costs are allocated on a time distribution.

  Action required of EAIC is based on two statutes:
  - 37-1-142, created by HB 525. The HB 525 review asks, among public purpose criteria, whether licensure significantly increases the cost of service to the public; and
  - 37-1-101(9), which requires notice to the board and to the EAIC if a board cannot operate in a cost-effective manner. The EAIC also is expected to review suggestions under 37-1-101(9)(c) for the board's solutions for achieving fiscal solvency. The Board of Hearing Aid Dispensers apparently has "borrowed" spending authority of $20,000 from the Board of Nursing, and $5,000 each from the Board of Nursing Home Administrators and the Board of Clinical Laboratory Science Practitioners.[2] The Board of Hearing Aid Dispensers had a proposed budget for FY 2012 (ending June 30) of $44,855. The state accounting system indicates that as of March 29, 2012, the Board of Hearing Aid Dispensers had a negative fund balance of $44,167, with

[1] Of the 13 complaints filed in FY 2010, the board generated one and the public generated 12. Eight cases were dismissed and the remaining five complaints were related to a failure to refund. Of the 16 cases in FY 2011, six were dismissed, two are being investigated for unlicensed practice, and five are for disciplinary action. The board generated seven of the complaints. The public filed three complaints for failure to refund or because hearing aids did not work properly.

[2] The decrease in spending authority for these three boards means the boards cannot expend those amounts, which were in their budgets.

$3,480 in revenues, $60,330 in expenditures. The negative fund balance is expected to be erased by the end of the fiscal year with an increase in the licensing renewal fee to $1,000 annually.

Decision of whether to retain or dissolve board

If a board is dissolved, there are several options for those who want some sort of regulation. The profession or occupation may be:

- regulated as a program, which retains licensing and costs about as much as having a board minus the cost of board meetings;
- merged into another board. Some states combine hearing aid dispensers with speech language pathologists and audiologists.
- created as part of a new board that would deal with all types of prosthetics, not just hearing aids. That proposal would imply adding licensure of people who currently are not licensed, such as people who make prostheses.
- regulated through statutes in the Consumer Protection Act, which would give protection to consumers and result in complaints being handled either in small claims court or by the Attorney General's Office, or both, depending on how the changes might be written. Wheelchair warranties, for example, are protected under Title 30, chapter 14, Part 12.

In determining whether to retain the board, the following criteria extrapolated from HB 525 is to be considered:

- does licensure significantly increase the cost of service to the public (and does the cost of licensure as a hearing aid dispenser put them at a competitive disadvantage with the cost of licensing for an audiologist -- not taking into account that audiologists also provide different services)?
- would the unregulated practice create a direct, immediate hazard to the public health, safety, or welfare?
- is a hearing aid dispenser's scope of practice readily identifiable and distinguishable from the scope of practice of an audiologist?
- does fitting and dispensing hearing aids require a specialized skill or training for which nationally recognized standards of education and training exist?
- does public support exist for licensure?
- are the qualifications for licensure justified?

Among considerations specific to the Board of Hearing Aid Dispensers are:

- is licensure necessary for installation of a product in an ear? What harm can be done? Is the major complaint about the product or the installation? Is this intended to be consumer protection from poor service and poor equipment or is it consumer protection from harm caused by fitting the hearing aid?
- if licensure is considered necessary, could the licensure be done through a program or through another board? If part of the cost problem relates to complaints generated by the board as much as by the public, would moving the legal costs to another board be fair to the licensees of that board?

More on options

Operating as a program -- Instead of a board handling complaints and regulating the profession, the Department of Labor and Industry handles licensing and addresses complaints

for programs. Currently the department handles programs for: addiction counselors; professional boxing promoters and contestants; boiler operators; operators of certain hoisting engines and cranes.

Merging with another board -- Throughout the history of boards there have been consolidations, reportedly with grief on all sides. The Board of Barbers merged with the Board of Cosmetologists in 2003. The Board of Denturists was merged into the Board of Dentistry in 1987. Landscape architects lost their board over financing difficulties in 2007 and became part of the Board of Architects and Landscape Architects. The board most frequently mentioned for merger is the Board of Speech Language Pathologists and Audiologists, which was created in 1975. The Board of Hearing Aid Dispensers predates that board, having been created in 1969. Some people have suggested that the Alternative Health Care Board be a catch-all for hearing aid dispensers and others[3], with possibly a name change. Currently the Alternative Health Care Board encompasses the fields of naturopathic physicians and direct-entry midwives, which is more about alternative health care choices and not just other professions related to well-being.

Creating a new board of multiple occupations -- This option suggests combining under one board of ancillary health care providers all health care-related licensees who do not have sufficient numbers to adequately fund their separate boards. Those with fewer than 200 licensees include: midwives and naturopathic physicians under the Alternative Health Care Board, athletic trainers under the Board of Athletic Trainers, private adolescent treatment facilities licensed under the Board of Private Alternative Adolescent Residential or Outdoor Programs, sanitarians licensed under the Board of Sanitarians, and denturists licensed under the Board of Dentistry.

Some have argued that putting occupations with different levels of educational experience together can result in domination of the board by those with advanced degrees. During testimony on SB 132, a similar argument was made along with the complaint that audiologists were being dually licensed under both the Board of Speech Language Pathologists and Audiologists and the Board of Hearing Aid Dispensers. Some of those who testified in favor of SB 132 pointed out that, by rule, audiologists must now have a doctorate in audiology to be licensed. By statute, hearing aid dispensers must meet the following qualifications (from 37-16-402, MCA):

> (1) be a person of good moral character;
>
> (2) have an education equivalent to a 4-year course in an accredited high school or hold a current license as an audiologist under Title 37, chapter 15; and
>
> (3) be free of contagious or infectious disease.

The Board of Medical Examiners (BME) is an example of a board that regulates various occupations and professions with varying educational requirements for licensing. In addition to physicians, BME regulates podiatrists, acupuncturists, physician assistants, and nutritionists.

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[3]One possibility for a board is to combine those occupations that create or fit medical devices or prostheses. This would allow denturists to be included. Florida and Texas license orthotists and prothetists, which have their own board.

Retaining the Board As Is - But Fixing Possible Statutory Problems
One option under HB 525 is to retain the Board of Hearing Aid Dispensers as is. Because of the concerns about fiscal insolvency, the Economic Affairs Committee may want to consider options to adjust both the status of the board and fix possible statutory problems.

Fiscal Insolvency Issues - As projected, the board expects to license only about 60 hearing aid dispensers in FY 2013. A rule change proposes a $1,000 annual licensing fee. The department suggests that some other combination of approaches will also be made to reduce costs. One possible statutory change would be to change the way that refunds are handled. Refunds are among the major consumer complaints, which lead to the costs for investigations and board screening and adjudication panels.

Possible Statutory Problems - There is no direct requirement in statute that a person must take an examination to be licensed. The implication for examination is suggested in 37-16-405(1), MCA, which uses the word "may" and says:

> An applicant who fulfills the requirements of 37-16-402 and who has not previously applied to take a practical examination may apply to the board for a trainee license.

One question is whether a person feels that he or she has to first be a trainee. If not, that applicant may ask why they need to apply for a trainee license. The statute further states that the applicant must verify having passed the written portion of the examination "as determined by board rule". The rule regarding examinations does not specify the basis for the examination only that a passing score must be 75% and that the exam must include a Montana jurisprudence section on "Montana laws and rules, administered by the board".

The written and practical examination and application fee costs $500. For the hearing aid trainee the application fee and cost of written and practical examination is $600. A licensee from another state must pay a $500 application fee. (ARM 24.150.401) The proposed rules would state the source of the written examination, but current rule does not describe what the written examination is except for those applying for a license from out-of-state. Those applying for a reciprocal license must show (according to ARM 24.150.2201) that their knowledge is substantially equivalent, defined as passing:

> (a) the written International Hearing Society examination and a practical examination through the International Hearing Society, verifying the minimum competencies to fit and dispense hearing aids and related devices, with a passing score of 75 percent or greater on each examination; and
>
> (b) a training period under the direct supervision of a licensed hearing aid dispenser of not less than 1000 hours, or a board-approved formal hearing aid dispenser education and training program, or working 180 days as a licensed hearing aid dispenser in another state.

One proposal to specify in statute the requirement of an examination would be to add to the qualifications that a person has passed an exam.

Another fix to statutes worth discussion is to remove the requirement for one of the Board of Hearing Aid Dispenser members to be an audiologist who has a license from the Board of Hearing Aid Dispensers. Now that audiologists do not have to be licensed by the Board of

Hearing Aid Dispensers, there are unlikely to be many audiologists willing to shell out $1,000 for a license that they do not need to practice. That would leave a permanent shortage of members on the Board of Hearing Aid Dispensers. The relevant parts of the board statute, 2-15-1740, say:

> (2) The board consists of five members appointed by the governor with the consent of the senate, including:
> (a) two members, each of whom has been a **licensed hearing aid dispenser** for at least 5 years, possesses a current audiologist license issued under Title 37, chapter 15, and has a master's level college degree;...

Summary

The Economic Affairs Committee has an obligation under HB 525 to decide whether to retain or dissolve the Board of Hearing Aid Dispensers. There are financial problems with the board and the highest licensing fee of any other professional or occupational board in Montana. That means the Economic Affairs Committee also may want to examine other ways of handling licensing of hearing aid dispensers if the committee decides that the current board is not appropriate. There are various options for licensing or regulating hearing aid dispensers. If the committee chooses to retain the board, there are some statutory changes that may help the board to operate more effectively.

The following table provides information on how selected states regulate hearing aid dispensers.

How Selected* Other States Handle Licensure of Hearing Aid Dispensers

*Based on first two pages of Google Search on March 9, 2012

STATE	REGULATORY UNIT
Arizona	Speech and Hearing Professionals Advisory Committee: 2 SLPs, 2 MDs, 2 audiologists, 2 HADs, 2 public members, and 1 member of Cmsn for Deaf & Hard of Hearing. Licenses separate.
California	Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board (2 SLPs, 2 Aud. of which 1 is dispensing audiologist, and 2 HADs.) 1 Gov.-appted public member otolaryngologist. 2 legislative-appointed public members. HAD Committee within board. Hearing Aid Dispensers Bureau merged in 2010 with the Speech-Language Pathology and Audiology Board.
Georgia	Board of Hearing Aid Dealers and Dispensers. Consists of 4 HADs, 1 MD, 1 audiologist, 1 consumer member. Dispenser's license - $120. Dealer's license $80. Renewal for both dealers/dispensers - $160.
Iowa	Board of Hearing Aid Dispensers. Consists of 3 HADs and 2 public members who are not HADs.
Maryland	State Board of Audiologists, Hearing Aid Dispensers, and Speech-Language Pathologists. Consists of 3 SLPs, 3 Audiologists, 3 HADs,, 2 MDs, 2 consumers.
New Jersey	Hearing Aid Dispensers Examining Committee, under the supervision of the State Board of Medical Examiners. Committee consists of 3 HADs, 1 MD-Otolaryngologist, 1 clinical audiologist, 1 public member.
New York	Hearing Aid and Dispensing Advisory Committee. Consists of: 4 audiologists who dispense hearing aids, 4 HADs, 2 Otolaryngologists, 1 public member representing adults over age 50, 1 public member who uses hearing aids, 1 industry member, 4 ex officio members from Sec. of State, Educ. Dept., Dept. Health, and Attorney General's office. Dispensing and licensed audiologists must be registered as a hearing aid dispenser.