

# *State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments*

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*Project Manager: Erick Fajardo*

## **Committee at a Glance**

The State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments (the Committee) licenses and regulates individuals practicing this trade. Hearing instrument fitters and dispensers measure human hearing for the purpose of selecting, adapting, or selling hearing instruments. The Committee's mission is to protect and promote public health and welfare by developing and enforcing licensure rules and regulations for hearing instrument fitters and dispensers. To achieve this mission, the Committee carries out the following key activities.

- Develops and updates standards of practice for the fitting and dispensing of hearing instruments.
- Administers a written and practical exam for hearing instrument fitter and dispenser licensure three times per year.
- Issues and renews hearing instrument fitter and dispenser licenses and permits.
- Enforces regulation of hearing instrument fitters and dispensers by receiving and investigating complaints, and issuing sanctions to individuals who violate the Committee's statute or rules.

The Committee is administratively attached to the Texas Department of State Health Services (DSHS), housed within its Professional Licensing and Certification Unit. DSHS provides staff, facilities, and infrastructure necessary to execute the Committee's duties. DSHS also houses a related regulatory program, the State Board of Examiners for Speech-Language Pathology and Audiology (the Board) that regulates speech-language pathologists and audiologists in Texas.

## **Summary**

As part of this review, the Sunset Commission considered both the Committee and the Board, since both are housed within and administered by DSHS' Professional Licensing and Certification Unit and both license and regulate individuals who fit and dispense hearing instruments. The Sunset Commission considered the need to regulate these professions jointly, but concluded that they should be continued separately since the practice of fitting

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*The Committee's education and residency requirements are unnecessarily restrictive.*

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and dispensing hearing instruments is focused more on providing a product to consumers, while the practice of speech-language pathology and audiology is focused on providing a healthcare service to consumers. Additionally, the same DSHS staff administers both the Committee and the Board, so consolidation would not yield any significant efficiencies or cost savings.

However, the Sunset Commission found several inconsistencies in the Committee and Board's regulation of hearing instrument sales, particularly with respect to written contracts, recordkeeping, and the 30-day trial period. The Commission also concluded that several of the Committee's practices seem focused more on protecting current practitioners in the industry than consumers, and found the Committee's continuing education and residency requirements to be unnecessarily restrictive. Finally, the Commission compared the Committee's statute against standard licensing practices and identified several changes that would enhance efficiency, fairness, and public protection, and improve the consistency of the Committee's operations. The following material summarizes the Sunset Advisory Commission's recommendations on the State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments. Material on the State Board of Examiners for Speech-Language Pathology and Audiology can be found in a separate section of this report.

## Issue 1

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### ***Texas Has a Continuing Need for the State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments.***

The Committee regulates hearing instrument fitters and dispensers who measure human hearing for the purpose of selling devices for hearing loss treatment. The Sunset Commission found that the State has a continuing need to license and regulate hearing instrument fitters and dispensers to protect Texas consumers and to maintain standards for this occupation to ensure these practitioners are trained, competent, and ethical.

However, the Sunset Commission concluded the Committee should only be continued for six years so that its next Sunset review would coincide with the review of several other licensing programs within DSHS' Professional Licensing and Certification Unit. Performing these reviews at the same time would allow their structure and administration to be evaluated together, and would provide sufficient time for the Committee to implement any changes resulting from this review as well as the upcoming Sunset review of DSHS in 2013.

### **Recommendations**

#### ***Change in Statute***

##### **1.1 Continue the State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments for six years.**

This recommendation would continue the Committee for six years, administratively attached to DSHS. This shorter Sunset date would enable the Sunset Commission to evaluate the Committee together with the six other licensing programs administered by DSHS' Professional Licensing and Certification Unit that are scheduled for Sunset review in 2017.

## 1.2 Apply the standard Sunset across-the-board requirements to the State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments.

- **Public membership.** This recommendation would prohibit a person from serving as a public member of the Committee if the person or the person's spouse uses or receives a substantial amount of tangible goods, services, or money from the Committee other than compensation or reimbursement authorized by law for Committee membership, attendance, or expenses. In addition, this recommendation would prohibit a person employed by or participating in the management of a business entity or other organization regulated by or receiving money from the Committee from being a public member on the Committee.
- **Conflict of interest.** This recommendation would define "Texas trade association" and prohibit an individual from serving as a member of the Committee if the person or the person's spouse is an officer, employee, or paid consultant of a Texas trade association in the field of fitting and dispensing hearing instruments.
- **Presiding officer designation.** This recommendation would require the Governor to designate a member of the Committee as the presiding officer to serve in that capacity at the pleasure of the Governor, rather than the Committee members electing a president and vice president.
- **Grounds for removal.** This recommendation would specify the grounds for removal for Committee members and the notification procedure for when a potential ground for removal exists.
- **Board member training.** This recommendation would clearly establish the type of information to be included in the Committee member training. The training would need to provide Committee members with information regarding the legislation that created the Committee; its programs, functions, rules, and budget; the results of its most recent formal audit; the requirements of laws relating to open meetings, public information, administrative procedure, and conflicts of interest; and any applicable ethics policies.
- **Separation of duties.** Under this recommendation, the Committee would be required to adopt policies clearly defining its role of setting policy separate from staff responsibilities. Where statute delegates a duty to DSHS staff, the Committee would retain final authority to administer the licensing Act and direct the actions of staff.
- **Public testimony.** This recommendation would ensure the opportunity for public input to the Committee on issues under its jurisdiction.

## Issue 2

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### ***The Committee's Continuing Education Requirements Are Unnecessarily Restrictive for Both Licensees and Sponsors.***

Texas hearing instrument fitters and dispensers must complete 20 hours of continuing education annually to ensure licensees stay current on practices and advancements within the profession. The Sunset Commission found the Committee's annual continuing education requirements and lack of online course opportunities place an undue burden on licensees. Additionally, the Committee's process for approving continuing education sponsors and courses is unduly burdensome, benefiting only a small number of existing sponsors and potentially limiting entry to other qualified providers.

Authorizing licensees to obtain more of their continuing education online and removing the 20-hour annual requirement would bring the Committee's continuing education requirements more in line with the other licensing programs administered by DSHS. Also, establishing clear requirements for continuing education sponsors and courses would improve the consistency and fairness of the approval process.

## **Recommendations**

### ***Change in Statute***

#### **2.1 Authorize hearing instrument fitters and dispensers to obtain at least half of their continuing education online.**

This recommendation would allow licensed hearing instrument fitters and dispensers to obtain more of their continuing education through online courses. The Committee would be authorized to allow more than half of continuing education to be provided by online sponsors. As a result of this recommendation, the Committee would adopt rules to establish clear and fair requirements for online continuing education sponsors and courses. Once requirements are established, staff would be responsible for reviewing and approving online continuing education sponsor and course applications.

#### **2.2 Require licensees to complete 20 hours of continuing education every two years.**

Effective May 1, 2012, this recommendation would change the current 20-hour continuing education requirement from an annual requirement to a biennial requirement.

#### **2.3 Require the Committee to establish, by rule, clear requirements for continuing education sponsors and courses, and require staff, rather than the Committee, to review and approve sponsors and courses.**

Under this recommendation, the Committee would be required to adopt rules to establish clear and fair requirements for continuing education sponsors and courses, including providing a clear definition for both manufacturer and non-manufacturer sponsors. This recommendation would also require staff, rather than the Committee, to review continuing education sponsors and courses to help reduce the time it takes to receive approval. Staff would base their review on the Committee's requirements and either approve or deny the sponsor and course applications. Staff would obtain expertise from licensed Committee members where necessary to assist in a decision.

### ***Management Action***

#### **2.4 The Committee should reassess its \$500 annual continuing education sponsor fee.**

This recommendation directs the Committee to review its annual fee for continuing education sponsors to ensure it generates sufficient revenue without creating a barrier to entry as a continuing education sponsor. As part of this review, the Committee should work with DSHS staff to gauge the appropriateness of the fee, particularly in comparison to the other licensing programs in the Unit, and to determine what fee level is needed to generate a sufficient amount of revenue to adequately administer the program. The Committee should also solicit input from appropriate stakeholders to provide transparency and fairness to the process.

## Issue 3

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### ***The Committee's Residency Requirement Is Unnecessary and Needlessly Restricts Entry of Out-of-State Hearing Instrument Fitters and Dispensers to Texas.***

The Committee provides an abridged path to licensure for hearing instrument fitters and dispensers licensed in other states applying for a Texas license. However, the Committee requires out-of-state applicants to establish Texas residency before applying for a license. The Sunset Commission found this residency requirement creates an unnecessary barrier to entry, as the Committee already has sufficient requirements to ensure out-of-state applicants are qualified. Also, having the Committee, rather than staff, review and approve out-of-state licensure applications is inefficient, potentially taking several months for an out-of-state practitioner to become licensed.

### **Recommendations**

#### ***Change in Statute***

- 3.1 Remove the statutory provision requiring out-of-state hearing instrument fitters and dispensers to establish Texas residency before applying for Texas licensure.**

This recommendation would remove the statutory requirement that hearing instrument fitters and dispensers licensed in other states establish Texas residency before applying for a Texas license.

- 3.2 Require DSHS staff, not the Committee, to review and approve all out-of-state applications for licensure.**

Under this recommendation, DSHS staff would review and approve all licensure applications from licensed hearing instrument fitters and dispensers from other states. Statute specifically defines the criteria hearing instrument fitters and dispensers licensed in other states must meet to become licensed in Texas, which staff would use when approving or denying these applications. In addition, the Professional Licensing and Certification Unit staff at DSHS already has an established process for the intake, review, and approval of applications for licensing and certification.

## Issue 4

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### ***The Committee's Examination Practices Do Not Adequately Ensure Fairness and Objectivity.***

Candidates for hearing instrument fitter and dispenser licenses must pass both a written exam and a practical exam. Committee members and other licensed hearing instrument fitters and dispensers proctor the practical exam. The Committee and DSHS staff have not created formal policies to ensure proctor qualifications and proper conduct during the practicum, raising concerns regarding proctor objectivity, particularly in this competitive business.

## Recommendations

### *Change in Statute*

- 4.1 Require the Committee to adopt rules establishing qualifications for practical exam proctors, and require staff to select and assign proctors based on these qualifications.**

Under this recommendation, the Committee would establish formal qualifications for proctors to help ensure their professionalism and objectivity in administering the practical exam. The qualifications should, at a minimum, specify the number of years a proctor must be licensed as a hearing instrument fitter and dispenser, and the type of disciplinary actions that would disqualify a licensee from serving as a proctor. DSHS staff would select licensees to serve as non-member proctors based on these qualifications. Additionally, staff would be responsible for pairing the proctors by assigning them to specific candidates to administer the practicum.

### *Management Action*

- 4.2 Direct staff to develop and consistently enforce formal policies and procedures for administration of the practical exam.**

DSHS staff should formally establish and enforce written policies and procedures for the administration of the practical exam to better ensure candidates receive consistent and fair evaluations. While the Committee currently uses instructions and procedures developed by staff to administer the practical exam, these need to be formalized and expanded upon to include training requirements for new proctors. These policies and procedures should also attempt to protect the candidate's identity throughout the examination process to the extent practicable. Staff should provide copies of these policies and procedures to the proctors, volunteers, and candidates to ensure all of the parties are informed of their rights and responsibilities during the exam process. Finally, staff should ensure the policies and procedures are followed by having a staff person observe or listen to the recording of at least 25 percent of exams selected at random.

## Issue 5

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### ***Key Elements of the Committee's Licensing and Regulatory Functions Do Not Conform to Common Licensing Standards.***

Over the past 32 years, the Sunset Commission has reviewed more than 98 occupational licensing agencies. In doing so, the Sunset Commission has identified standards that are common practices throughout the agencies' statutes, rules, and procedures. In reviewing licensing functions of the Committee, the Sunset Commission found that certain licensing and enforcement processes in the Committee's statute do not match these model standards. Based on these variations, the Sunset Commission identified changes needed to bring the Committee in line with model standards to more fairly treat licensees and better protect the public.

## **Recommendations**

### ***Change in Statute***

#### **5.1 Require the Committee to conduct a fingerprint-based criminal background check of all hearing instrument fitter and dispenser licensees.**

This recommendation would require the Committee to conduct fingerprint criminal background checks, through the Department of Public Safety (DPS), on all licensees to review complete federal and state criminal histories of applicants. Licensees would use the State's fingerprint vendor to collect and submit fingerprints. The DPS system provides automatic updates, eliminating the need for additional background checks when investigating a complaint or conducting an audit. New prospective licensees would provide fingerprints at the time of application, and existing licensees would provide fingerprints upon renewal. Applicants would pay the one-time, approximate \$45 cost.

#### **5.2 Authorize the Committee to order direct refunds to consumers as part of the 30-day trial period complaint settlement process for hearing instruments.**

This recommendation would authorize the Committee to mandate that a licensee issue a refund to a consumer who is entitled to it according to the terms of the 30-day trial period policy for hearing instruments.

#### **5.3 Require Committee members to recuse themselves from voting on disciplinary actions in cases in which they participated in investigations.**

This recommendation would require Committee members to recuse themselves from voting on disciplinary actions in cases in which they played a role at the investigatory level. Recusing Committee members who have a prior interest in a case would promote objective decision making and ensure that the respondent receives a fair hearing.

#### **5.4 Require the Committee to include at least one of its public members on its subcommittees.**

This recommendation would ensure the Committee appoints at least one public member to each of its subcommittees, including the complaints subcommittee. This subcommittee assists the Committee in determining whether a violation occurred and what action to take, and therefore should always include public membership to ensure consumer interests are properly represented in the enforcement process.

#### **5.5 Require the Committee to approve informal agreements made by agency staff with licensees through the informal settlement conference process.**

Having staff, instead of Committee members, conduct informal settlement conferences would enable more conferences to be held, and would expedite cases through the system. Staff would use the Committee's penalty schedule to determine the appropriate disciplinary action to recommend to the full Committee. If the licensee agrees with the staff's informal settlement recommendation, the Committee would vote to ratify, modify, or reject the recommendation.

## **5.6 Grant cease-and-desist authority to the Committee for unlicensed practice of hearing instrument fitting and dispensing.**

This recommendation would authorize the Committee to assess administrative penalties against individuals who violate cease-and-desist orders. This authority would help the Committee better protect the public from unlicensed fitters and dispensers of hearing instruments and standardize its procedures with commonly applied licensing practices.

## **Issue 6**

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### ***Having Different Rules Governing the Sale of Hearing Instruments Treats Customers Inequitably and Causes Confusion.***

Both the Committee and the Board have authority to adopt rules regarding the sale of hearing instruments. The Sunset Commission found several inconsistencies in the Committee's and the Board's rules relating to the standards for hearing instrument sales, including different requirements for the written purchase contract, recordkeeping, and 30-day trial period. Having inconsistent rules regarding hearing instrument sales is unfair to consumers and creates confusion for both consumers and licensees. Requiring the Committee and the Board to jointly adopt rules for hearing instrument sales would ensure consumers who purchase hearing instruments from audiologists receive the same information about their purchase as consumers who purchase hearing instruments from hearing instrument fitters and dispensers.

### **Recommendation**

#### ***Change in Statute***

#### **6.1 Require the Committee and the State Board of Examiners for Speech-Language Pathology and Audiology to jointly develop and adopt rules for hearing instrument sales.**

Under this recommendation, the Committee and the Board would be statutorily required to work together to develop and adopt common rules for hearing instrument sales, including the written contract, recordkeeping, and 30-day trial period for hearing instrument sales. The written contract and 30-day trial period policy for hearing instruments would be required to be written in clear, plain language. To help ensure fairness and consistency, DSHS staff should facilitate this process, bringing together the expertise of the professional members of both the Committee and Board. The Committee and Board should adopt the common rules by May 1, 2012.

## **Fiscal Implication Summary**

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These recommendations would not have a significant fiscal impact to the State.