NORTH CAROLINA STATE HEARING AID DEALERS AND FITTERS BOARD

RULEMAKING FISCAL NOTE

DATE: December 7, 2011

RULE CONTACT PERSON: Catherine Jorgensen rules@nchalb.org 919-834-3661

RULEMAKING COORDINATOR: Catherine Jorgensen rules@nchalb.org 919-834-3661

PROGRAM AFFECTED: General Examination and License Provisions

STATUTORY AUTHORITY: G.S. 93D-3(c)(14) (Appendix A)

IMPACT SUMMARY:

State Government: No
Local Government: No
Substantial Impact: No
Federal Impact: No
Small Business: No

SUMMARY:

Rule 21 NCAC 22F.0114 (TRAINING AND SUPERVISION) is being amended to repeal subsection (b) and (c) because G.S. 93D-3(c)(14) refers to a “voluntary” not “mandatory” “apprentice training workshop and allows, but does not require, the Board to collect fees for providing such a workshop. See proposed rule change in Appendix B. The Board has not provided an “apprentice training” workshop as described in the statute, but instead has provided in its rules for an “examination preparation workshop.” Because of recent statutory changes, the Board has had reduced number of attendees at the workshop and is now unable to provide the exam workshop without expending more money than the Board takes in from workshop attendees. In addition, the Board has now recognized that its rule provides for a mandatory workshop that is different from the voluntary workshop contemplated by the statute. The rule change is expected to save the Board funds related to preparing and holding the workshop. The Board is receipt supported and no state funds are involved.

In addition, the Board is updating rules 21 NCAC 22F .0101, .0103, .0107 to change when examinations would be held, clarify what “duly made application” means for the purposes of refusing admission to an examination, and allow for up 30 days for the applicant to receive their examination results in the mail.

EFFECTIVE DATE: Upon conclusion of rulemaking process; approximately May 1, 2012.
§ 93D-3. North Carolina State Hearing Aid Dealers and Fitters Board; composition, organization, duties and compensation

(a) There is hereby created a board whose duty it shall be to carry out the purposes and enforce the provisions of this Chapter, and which shall be known as the "North Carolina State Hearing Aid Dealers and Fitters Board." The Board shall be composed of seven members. Four members who have been actively engaged in the fitting and selling of hearing aids for three years shall be appointed by the Governor. These initial appointments are for the following terms: one for one year, one for two years, one for three years and one for four years. All appointments made on or after July 1, 1981, shall be for terms of three years.

One member shall be appointed by the Governor who shall be a physician practicing in North Carolina, preferably specializing in the field of otolaryngology. All appointments shall be for terms of three years.

One member shall be appointed by the Governor from a list of two audiologists residing in North Carolina, which list shall be compiled by the North Carolina Speech and Hearing Association. This initial appointment shall be for a term of three years. All appointments made on or after July 1, 1981, shall be for a term of three years.

One member shall be appointed by the Governor to represent the interest of the public at large. This member shall have no ties to the hearing aid business nor shall he be an audiologist. The Governor shall appoint the public member not later than July 1, 1981, to serve a term of three years.

All Board members serving on June 30, 1981, shall be eligible to complete their respective terms. No member appointed to a term on or after July 1, 1981, shall serve more than two complete consecutive terms.

Vacancies on the Board shall be filled by appointment of the Governor. Appointees shall serve the unexpired term of their predecessor in office and must be appointed from the same category as their predecessor in office. The members of the Board, before entering their duties, shall respectively take all oaths taken and prescribed for other State officers, in the manner provided by law, which oaths shall be filed in the office of the Secretary of State, and the Board shall have a common seal.

(b) The Board shall choose, at the first regular meeting and annually thereafter, one of its members to serve as president and one as secretary and treasurer. A majority of the Board shall constitute a quorum. The Board shall meet at least once a year, the time and place of the annual meeting and any special meetings to be designated by the president. The secretary and treasurer of the Board shall keep a full record of its proceedings, including a current list of all licensees, which shall at all reasonable times be
open to public inspection. The Board is authorized to employ an executive secretary and to provide such assistance as may be required to enable said Board to properly perform its duties.

(c) The Board shall:

1. Authorize all disbursements necessary to carry out the provisions of this Chapter;

2. Supervise and administer qualifying examinations to test and determine the knowledge and proficiency of applicants for licenses;

3. Issue licenses to qualified persons who apply to the Board;

4. Obtain audiometric equipment and facilities necessary to carry out the examination of applicants for licenses;

5. Suspend or revoke licenses pursuant to this Chapter;

6. Make and publish rules, including a code of ethics, that are necessary and proper to regulate the fitting and selling of hearing aids and to carry out the provisions of this Chapter;

7. Exercise jurisdiction over the hearing of complaints, charges of malpractice including corrupt or unprofessional conduct, and allegations of violations of the Board's rules that are made against any fitter and seller of hearing aids in North Carolina;

8. Require the periodic inspection and calibration of audiometric testing equipment of persons who are fitting and selling hearing aids;

9. In connection with any matter within the jurisdiction of the Board, summon and subpoena and examine witnesses under oath and to compel their attendance and the production of books, papers, or other documents or writings deemed by the Board to be necessary or material to the inquiry. Each summons or subpoena shall be issued under the hand of the secretary and treasurer or the president of the Board and shall have the force and effect of a summons or subpoena issued by a court of record. Any witness who shall refuse or neglect to appear in obedience thereto or to testify or produce books, papers, or other documents or writings required shall be liable to contempt charges. The Board shall pay to any witness subpoenaed before it the fees and per diem as paid witnesses in civil actions in the superior court of the county where such hearing is held;

10. Inform the Attorney General of any information or knowledge it acquires regarding any "price-fixing" activity whatsoever in connection with the sales and service of hearing aids;

11. Establish and enforce rules to guarantee that a full refund will be made by the seller of a hearing aid to the purchaser when presented with a written medical opinion of an otolaryngologist that the purchaser's hearing cannot be improved by the use of a hearing aid;

12. Fund, establish, conduct, approve and sponsor instructional programs for registered apprentices and for persons who hold a license as well as for persons interested in obtaining adequate instruction or programs of study to qualify them for registration to the extent that the Board deems such instructional programs to be beneficial or necessary;
(13) Register persons serving as apprentices as set forth in G.S. 93D-9;

(14) Have the power to set and collect fees in accordance with Chapter 150B of the General Statutes for the items listed in this subdivision and for other items for which this Chapter gives the Board the authority to set a fee:

   a. For a continuing education make-up class provided by the Board, a fee not to exceed fifty dollars ($50.00) per person for each day of instruction. The Board may not offer a make-up class that is longer than two days;

   b. For a license examination preparation course provided by the Board, a fee not to exceed fifty dollars ($50.00) per person for each day of instruction. The Board may not offer an examination preparation course that is longer than three days;

   c. For approval of a continuing education program provider, a fee not to exceed forty dollars ($40.00);

   d. For verifying and recording attendance at a continuing education program not provided by the Board, a fee not to exceed fifteen dollars ($15.00) per licensee per program;

   e. For providing a voluntary two-day apprentice training workshop, a fee not to exceed one hundred dollars ($100.00) per person, and for providing a three-day voluntary apprentice training workshop, a fee not to exceed one hundred fifty dollars ($150.00) per person;

   f. For administering an examination, a fee of three hundred dollars ($300.00); and

(15) Adopt annually a balanced budget prior to the beginning of its fiscal year, against which expenditures shall be reviewed throughout the fiscal year to ensure that expenditures during the year do not exceed receipts for that year plus amounts held by the Board in reserve. Except for monies from charges for photocopying and similar charges, the Board's receipts shall consist of and be limited to funds derived from fees expressly authorized by law.

(d) Members of the Board shall be entitled to travel, per diem, and other expenses authorized by G.S. 93B-5. The expenses shall be paid from the fees and assessments received by the Board under the provisions of this Chapter. No part of these expenses or any other expenses of the Board, in any manner whatsoever, shall be paid out of the State treasury. All moneys received in excess of expense allowance and mileage, as above provided, shall be held by the secretary-treasurer as a special fund for meeting other expenses of the Board and carrying out the provisions of this Chapter.

The Board shall make an annual report of its proceedings in accordance with G.S. 93B-2.

HISTORY: 1969, c. 999; 1973, c. 1331, s. 3; c. 1345, ss. 1, 2; 1975, c. 550, s. 1; 1981, c. 601, ss. 2-5; 1987, c. 827, s. 80; 1991, c. 592, s. 1; 2007-406, ss. 1, 2.
§ 93D-5. Requirements for registration; examinations; apprentice licenses

(a) No person shall begin the fitting and selling of hearing aids in this State unless the person has been issued a license by the Board or is an apprentice working under the supervision of a licensee. Except as hereinafter provided, each applicant for a license shall pay a fee set by the Board, not to exceed two hundred fifty dollars ($250.00), which fee may be prorated by the Board, and shall show to the satisfaction of the Board that the applicant:

(1) Is a person of good moral character.

(2) Is 18 years of age or older.

(3) Has an education equivalent to a four-year course in an accredited high school.


(b) Except as hereinafter provided, no license shall be issued to a person until he has successfully passed a qualifying examination administered by the Board.

(c) No license shall be issued to any person until the person has served as an apprentice as set forth in G.S. 93D-9 for a period of at least one year; provided, that this subsection shall not apply to those persons qualified under G.S. 93D-6 nor to those persons holding a license in Audiology issued by the North Carolina Board of Examiners for Speech and Language Pathologist and Audiologist who have undergone 250 hours of supervised activity fitting and selling hearing aids under the direct supervision of a licensed hearing aid dispenser approved by the Board, or have met the licensure requirements under Article 22 of Chapter 90 of the General Statutes and have worked full time for one year fitting and selling hearing aids in the office of and under the direct supervision of an otolaryngologist and have participated in 250 hours of Board-supervised, continuing professional education in fitting hearing aids.

HISTORY: 1969, c. 999; 1975, c. 550, s. 2; 1981, c. 601, ss. 7, 8; c. 990, s. 1; 1991, c. 592, s. 2; 2007-406, s. 3.
§ 93D-9. Registration of apprentices

(a) Any person age 17 or older may apply to the Board for registration as an apprentice. Each applicant must be sponsored by a hearing aid dealer and fitter licensed by the Board.

(b) Upon receiving an application accompanied by a fee in an amount set by the Board, not to exceed one hundred dollars ($100.00), the Board may register the applicant as an apprentice, which shall entitle the applicant to fit and sell hearing aids under the supervision of a holder of a regular license.

(c) No applicant shall be registered as an apprentice by the Board under this section unless the applicant shows to the satisfaction of the Board that the applicant is or will be supervised and trained by a hearing aid fitter and seller who holds a license.

(d) If a person 18 years of age or older who is registered as an apprentice under this section does not take the next succeeding examination given after a minimum of one full year of apprenticeship, the person's apprentice registration shall not be renewed, except for good cause shown to the satisfaction of the Board.

(e) If a person who is registered as an apprentice takes and fails to pass the next succeeding examination given after one full year of apprenticeship, the Board may renew the apprenticeship license for a period of time to end 30 days after the results of the examination given next after the date of renewal of said registration. The fee for renewal of apprenticeship registration shall be set by the Board at an amount not to exceed one hundred fifty dollars ($150.00).

(f) The Board shall adopt rules implementing initial and renewal registration of apprentices.

HISTORY: 1969, c. 999; 1973, c. 1345, s. 4; 1981, c. 601, ss. 10-15; c. 990, s. 3; 1991, c. 592, s. 5.
APPENDIX B

21 NCAC 22F .0101  TIME OF EXAMINATIONS
The Board shall hold the qualifying examinations as set forth in G.S. 93D-8 on by publicizing each exam at least 90 days in advance, with one exam being offered on a day during the first Saturday week in May of each year and may hold an additional examination offered during the year examination on the first Saturday in November of each year if a sufficient number of timely filed applications are received to justify, in the Board's discretion, holding such additional examination.

History Note: Authority G.S. 93D-3(c); 93D-8; Eff. April 23, 1976; Amended Eff. May 1, 2012; January 1, 1992; May 1, 1988.

21 NCAC 22F .0103  SUBMISSION OF APPLICATIONS AND FEES
(a) A duly made application for issuance or renewal of an apprentice registration certificate shall be submitted to the Board no later than ten working days after the date that any of the following conditions exist:
   (1) Whenever a registered apprentice is separated from his sponsor for any reason and such individual wishes to obtain a new certificate to replace the invalidated certificate;
   (2) Whenever a registered apprentice is notified by the Board that he failed to pass the qualifying examination and such individual wishes to renew his certificate;
   (3) Whenever the Board notifies the individual that his apprentice registration certificate has been invalidated for any reason and such individual wishes to obtain a new certificate to replace the invalidated certificate; and
   (4) Whenever an Audiologist duly makes application for issuance of a license by examination and that individual elects to become a registered apprentice in order to engage in the fitting and selling of hearing aids, under the supervision of a licensee approved by the Board, while waiting to take the next scheduled qualifying examination.
(b) A registered apprentice who holds a masters degree in Audiology and is not an Audiologist, as defined in 21 NCAC 22A .0301(2), must complete 250 clock hours of supervision by a licensee approved by the Board. However, no later than ten working days after any registered apprentice who is not an Audiologist has held a valid apprentice registration certificate for 365 calendar days, the apprentice shall submit a duly made application for issuance of a license by examination and shall take the next scheduled qualifying examination. All registered apprentices shall reapply for a license by examination, within the time prescribed in Paragraph (c) of this Rule, each time they take and fail to pass the qualifying examination.
(c) Whenever a registered applicant is required to take the qualifying examination as a condition for issuance of a license or reissuance of a suspended license, the duly made application shall be considered by the Board to be timely if it is received by the Board no later than 30-45 consecutive days prior to the examination date. The Board shall have the right to refuse any person admission to the qualifying examination if such individual has not submitted the duly made application, as defined in 21 NCAC 22A .0309 for issuance or reissuance of a license, has not attended an examination preparation workshop as set forth in 21 NCAC 22F .0014(b), or has not made a timely filing.
(d) All fees shall be made payable to the N.C. Hearing Aid Dealers and Fitters Board. When a company or personal check is received in payment of any fee, the Board shall wait until final credit on the check is received before providing the license or other document requested. A processing fee of twenty dollars ($20.00) (or any greater amount allowed by law) shall be charged for any check on which payment is refused by the payor bank because of insufficient funds or because the drawer did not have an account at that bank at the time the check was presented to the Board.
21 NCAC 22F .0107 COMMUNICATION OF RESULTS OF EXAMINATIONS
The office of the Board shall issue written notification to each registered applicant, by mailing exam results to the physical address provided by the applicant, concerning only his own the applicant’s performance on the qualifying examination, no later than 30 working days after the date of the examination.

History Note: Authority G.S. 93B-8; 93D-3(c); Eff. April 23, 1976; Amended Eff. May 1, 2012; February 1, 1996; May 1, 1988.

21 NCAC 22F .0114 TRAINING AND SUPERVISION
(a) Each registered apprentice, excluding those Audiologists who elect to be a registered apprentice while waiting to take the qualifying examination for the first time, shall submit to direct supervision by a licensee who is approved by the Board and who shall be responsible for the apprentice's training and supervision in the following areas:

   (1) Anatomy, physiology, and pathology of the auditory mechanism;
   (2) Measurement techniques and test interpretation for assessment of hearing impairment and hearing handicap;
   (3) Hearing aid technology including instrument circuitry and acoustic performance data;
   (4) Design, selection, and modification of earmold/shell coupling systems;
   (5) Hearing aid selection procedures, and fitting and adjustment techniques;
   (6) Post-delivery care including hearing aid orientation and counseling techniques, and hearing aid servicing;
   (7) Ethical conduct and regulatory issues concerning the fitting and selling of hearing aids; and
   (8) Other related topics that the sponsor or apprentice deem necessary.

(b) Before taking the qualifying examination for the first time, each registered apprentice who is not an Audiologist shall attend an examination preparation workshop, approved or sponsored by the Board, which consists of one 3-day session. The workshop dates shall be scheduled in conjunction with the dates for the qualifying examinations. Information concerning the scheduled times, dates, and topics for each workshop may be obtained from the office of the Board. Written notice of intent to attend any or all of the daily sessions shall be received by the Board at least 10 working days prior to the starting date of each workshop.

(c) The Board shall have the right to refuse any person admission to the workshop sessions if the individual is not a registered apprentice or a registered applicant, or if timely notification of intent to attend was not made in accordance with Paragraph (b) of this Rule.

History Note: Authority G.S. 93D-3(c); 93D-5; 93D-9; Eff. April 23, 1976; Amended Eff. February 1, 1996; January 1, 1992; May 1, 1988; November 4, 1980.