

**TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH
CHAPTER 265. HEARING AID DEALERS AND FITTERS**

RULEMAKING ACTION:

Notice of proposed EMERGENCY and PERMANENT rulemaking

PROPOSED RULES:

Subchapter 3. Examinations

310:265-3-1 [AMENDED]

310:265-3-2 [AMENDED]

SUMMARY:

The purpose of this rule change is to prevent an increase in examination fees charged to applicants for licenses to fit and deal hearing aids pursuant to Title 63 § 1-1750 et seq. The vendor has refused to renew its contract with the Oklahoma State Department of Health unless the Department agrees to allow the vendor to raise the examination fees from the current \$95 as provided in rule, to \$225. The proposed rule will prevent the Oklahoma State Department of Health from being required by the examination vendor to defend the examination questions and answers against requests made under the Oklahoma Open Records Act. Additionally, the proposed rule prevents the Oklahoma State Department of Health from being financially liable for damages to the examination vendor should the Department not succeed in preventing disclosure under the Oklahoma Open Records Act. The proposed changes accomplish these purposes by deleting the business name of a specific examination vendor, and by allowing for testing guidelines to be drawn from a national examination, if available, rather than from a specifically named society. The changes will facilitate the Department's efforts to compile and offer an examination without fee increases, and without exposing the State of Oklahoma to financial loss related to an Oklahoma Open Records Act disclosure.

310:265-3-1. The current rule identifies a particular third party examiner to be solely responsible for the written examination scores. The proposed language will remove mention of any specific third party examiner. The effect of this rule change will allow the Department to identify an adequate examination without increasing the examination fee for applicants.

310:265-3-2. The current rule specifies the state written examination shall follow National Hearing Aid Society guidelines and other similar examinations given by surrounding states. The proposal removes reference to the national examining body.

AUTHORITY:

Oklahoma State Board of Health, Title 63 O.S. Section 1-104; and Title 63 O.S. Section 1-1750.

COMMENT PERIOD:

October 1, 2014, through November 5, 2014. Interested persons may informally discuss the proposed rules with the contact person identified below; or may, through November 5, 2014, submit written comment to the contact person identified below; or may, at the hearing, ask to present written or oral views.

PUBLIC HEARING:

Pursuant to 75 O.S. § 303 (A), the public hearing for the proposed rulemaking in this chapter shall be on November 5, 2014, at the Oklahoma State Department of Health, 1000 Northeast Tenth Street, Oklahoma City, OK 73117-1207, in room 1102 beginning at 10:00 a.m. Those wishing to present oral comments should be present at that time to register to speak. The hearing will close at the conclusion of those registering to speak. Interested persons may attend for the purpose of

submitting data, views or concerns, orally or in writing, about the rule proposal described and summarized in this Notice.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

Business entities affected by these proposed rules are requested to provide the agency with information, in dollar amounts if possible, on the increase in the level of direct costs such as fees, and indirect costs such as reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs expected to be incurred by a particular entity due to compliance with the proposed rule. Business entities may submit this information in writing through November 5, 2014, to the contact person identified below.

COPIES OF PROPOSED RULES:

The proposed rules may be obtained for review from the contract person identified below or via the agency website at www.health.ok.gov.

RULE IMPACT STATEMENT:

Pursuant to 75 O.S., §303(D), a rule impact statement is available through the contact person identified.

CONTACT PERSON:

Donald D. Maisch, General Counsel, Oklahoma State Department of Health, 1000 N.E. 10th Street, Oklahoma City, OK 73117-1207; phone (405) 271-6017, e-mail: DonM@health.ok.gov.

INITIAL RULE IMPACT STATEMENT

TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 265. HEARING AID DEALERS AND FITTERS

1. **DESCRIPTION:**

The purpose of this rule change is to prevent an increase in examination fees charged to applicants for licenses to fit and deal hearing aids pursuant to Title 63 § 1-1750 et seq. The vendor has refused to renew its contract with the Oklahoma State Department of Health unless the Department agrees to allow the vendor to raise the examination fees from the current \$95 as provided in rule, to \$225. The proposed rule will prevent the Oklahoma State Department of Health from being required by the examination vendor to defend the examination questions and answers against requests made under the Oklahoma Open Records Act. Additionally, the proposed rule prevents the Oklahoma State Department of Health from being financially liable for damages to the examination vendor should the Department not succeed in preventing disclosure under the Oklahoma Open Records Act. The proposed changes accomplish these purposes by deleting the business name of a specific examination vendor, and by allowing for testing guidelines to be drawn from a national examination, if available, rather than from a specifically named society. The changes will facilitate the Department's efforts to compile and offer an examination to license applicant for licensure without fee increases, and without exposing the State of Oklahoma to financial loss related to an Oklahoma Open Records Act disclosure.

2. **DESCRIPTION OF PERSONS AFFECTED AND COST IMPACT RESPONSE:**

Those classes of persons affected are persons applying for licensure to engage in the practice of fitting and dealing in hearing aids through the Oklahoma State Department of Health.

3. **DESCRIPTION OF PERSONS BENEFITING, VALUE OF BENEFIT AND EXPECTED HEALTH OUTCOMES:**

Persons benefiting will be all applicants of the hearing aid licensure program as they will not be required to pay higher examination costs due to third party examination increases now or in the future.

4. **ECONOMIC IMPACT, COST OF COMPLIANCE AND FEE CHANGES:** *(a description of the probable economic impact of the proposed rule upon affected classes of persons or political subdivisions, including a listing of all fee changes and, whenever possible, a separate justification for each fee change [75 O.S. §303.D.2(d)])*

The current third party examiner, currently stated in the regulation, increased their examination fee. By updating the regulation with the proposed changes, there would be no anticipation of an examination fee increase for applicants.

5. **COST AND BENEFITS OF IMPLEMENTATION AND ENFORCEMENT TO THE AGENCY:**

The estimated costs

The cost to the Department to implement the amendments will be approximately \$1,900 to cover the costs of rule drafting, adoption, publication, distribution, and education. The Department may incur additional costs if the examination compiled and offered by the Department exceeds \$95.

6. **IMPACT ON POLITICAL SUBDIVISIONS:**

There is no anticipated impact on political subdivisions.

7. **ADVERSE EFFECT ON SMALL BUSINESS:**
There is no anticipated adverse effect on small business.
8. **EFFORTS TO MINIMIZE COSTS OF RULE:**
This proposed rule change provides flexibility to the Department to identify an adequate examination at no increased fee to the applicant.
9. **EFFECT ON PUBLIC HEALTH AND SAFETY:**
There is no anticipated effect on public health and safety.
10. **DETRIMENTAL EFFECTS ON PUBLIC HEALTH AND SAFETY WITHOUT ADOPTION:**
Without adoption of this proposed change, the Oklahoma State Department of Health would not be able to offer testing for new license applicants as required in the rule within six months of an application being received.
11. This rule impact statement was prepared on August 21, 2014. Modifications made subsequent to the publication of the *Notice of Rulemaking Intent* were made on:

**TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH
CHAPTER 265. HEARING AID DEALERS AND FITTERS**

310:265-3-1. Qualifications

(a) Applicants may obtain a hearing aid dealer or fitter license by successfully passing qualifying examinations, provided the applicant:

- (1) Is at least eighteen (18) years of age;
- (2) Is of good moral character. A criminal record shall not in itself bar an applicant from licensing, but evidence of such record may be considered along with other information in determining whether or not the applicant is of good moral character.
- (3) Has an education equivalent to a four-year course in an accredited high school; and
- (4) Has filed with the Commissioner an application for examination and paid the examination fee of Ninety-five Dollars (\$95.00).

(b) An applicant for license by examination shall appear at a time, place and before such persons as the Commissioner may designate to be examined to demonstrate that he/she is qualified to practice the fitting and sale of hearing aids. Nothing in this examination shall imply that the applicant shall possess the degree of medical competence normally expected of physicians.

(c) The Commissioner shall give examination as required to permit applicants to be examined within six (6) months following the submission of the official application form.

(d) Successfully passing the examination means passing each of the sections based on the following criteria. When a passing score is obtained for any section, that section will not have to be taken again.

- (1) Passing score for the written examination is established by the examination provider, ~~International Institute for Hearing Instrument Studies~~.
- (2) Passing score for the Oklahoma Audiometric Practical examination is 70% or above.
- (3) Passing score for the Oklahoma Hearing Aid Rules examination is 70% or above.
- (4) Passing score for the Oklahoma Ear Impression practical examination is 70% or above.
- (5) Passing score for the Hearing Aid Trouble Shooting Practical Examination is 70% or above.

(e) No person may take any portion of the state examination more than three (3) times. Any person failing the state licensing examination three times shall not be allowed to apply for an

Oklahoma Hearing Aid Dealers and Fitters License for five (5) years from their application date. If a person fails any portion of the state licensing examination three (3) times, the Department shall summarily suspend and seek permanent revocation of the person's current temporary hearing aid dealers and fitters permit.

310:265-3-2. Contents of examination

The hearing aid dealer or fitter examination shall consist of an examination as compiled at the discretion of the Commissioner. ~~It shall follow, taking into consideration the guidelines of the National Hearing Aid Society if available for a national examination and shall follow guidelines of if available for~~ similar examinations given by surrounding states. The tests under this section shall not require a higher education in the fields of medicine, audiology or communication disorders. The examination shall consist of tests of knowledge as it pertains to the sale and fitting of hearing aids as follows:

- (1) Function of a hearing aid;
- (2) Pure tone audiometry, including air conduction testing and bone conduction testing (continuous-pulsing audiometer setting not accepted);
- (3) Recorded voice speech audiometry;
- (4) Masking when indicated;
- (5) Recording and evaluation of audiograms and speech audiometry to determine proper selection and adaptation of a hearing aid;
- (6) Taking earmold impressions;
- (7) Rules and regulations pertaining to the sale and fitting of hearing aids; and
- (8) Trouble Shooting pertaining to the identification of visible physical defects or damage to hearing aids.