

Title 22. Examining Boards.
Part XXXII. State Board of Examiners for Speech-Language Pathology and Audiology.
Chapter 741. Speech-Language Pathologists and Audiologists.
Subchapter P. Joint Rules for Fitting and Dispensing of Hearing Instruments by Telepractice
New §§741.231, 741.232, 741.233

Proposed Preamble

The State Board of Examiners for Speech-Language Pathology and Audiology (board), proposes new §§741.231 - 741.233, concerning the regulation and licensure of speech-language pathologists and audiologists.

BACKGROUND AND PURPOSE

The new rules are necessary to comply with Section 2 of Senate Bill (SB) 312, 83rd Legislature, Regular Session, 2013, which adds new §401.2022, to the Texas Occupations Code, requiring the board and the State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments (committee) to jointly adopt rules, with the assistance of the Department of State Health Services (department), to establish requirements for the fitting and dispensing of hearing instruments by the use of telepractice.

The proposed new rules in Subchapter P are proposed under Texas Occupations Code, §401.2022, which, together with a corresponding new rule proposed for 22 TAC, §141.30, pursuant to Texas Occupations Code, §402.1023, were jointly approved by the board and committee for publication as proposed new joint rules for the fitting and dispensing of hearing instruments by telepractice. The rules being proposed in new Subchapter P are in the format jointly approved for publication by the board and committee, and previously published by the board in the June 6, 2014, issue of the *Texas Register* (39 TexReg 4387). The board has withdrawn the previously published proposed Subchapter P rules and is now re-publishing these rules in coordination with publication of the corresponding proposed new joint rule 22 TAC §140.30 under Texas Occupations Code, §402.1023, to allow for all comments on the proposed new joint rules, whether submitted to the board or to the committee, based upon their respective publication of proposed new joint rules in 22 TAC, Chapter 741, Subchapter P, or in 22 TAC §141.30, to be considered before the board and committee each act to jointly adopt rules establishing requirements for the fitting and dispensing of hearing instruments by telepractice. Comments submitted in response to publication of the same proposed new joint rules on June 6, 2014, may be resubmitted for consideration during the comment period for this re-published proposed new joint rule.

SECTION-BY-SECTION SUMMARY

New §741.231, sets forth the purpose of the joint rules between the board and the committee regarding the fitting and dispensing of hearing instruments by telepractice.

New §741.232 defines the terms applicable to the rules in new Subchapter P.

New §741.233 sets forth the requirements for the fitting and dispensing of hearing instruments using telepractice.

FISCAL NOTE

Stewart Myrick, Interim Executive Director, has determined that for each year of the first five years the sections are in effect, there will be no fiscal implications to state or local governments as a result of enforcing or administering the sections as proposed.

SMALL AND MICRO-BUSINESS ECONOMIC STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS

Mr. Myrick has also determined that there will be no adverse economic impact to small businesses or micro-businesses required to comply with the sections as proposed. This was determined by interpretation of the rules that small businesses and micro-businesses will not be required to alter their business practices in order to comply with the sections. Therefore, an economic impact statement and regulatory flexibility analysis for small businesses and micro-businesses is not required.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

There are no anticipated economic costs to persons who are required to comply with the sections as proposed. The new rules do not impose additional fees. There is no anticipated impact on local employment.

PUBLIC BENEFIT

Mr. Myrick has also determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of enforcing or administering the sections will be to ensure the effective and consistent regulation of the fitting and dispensing of hearing instruments by telepractice from, or to a person in Texas, which will protect and promote public health, safety, and welfare when telepractice is used for the fitting and dispensing of hearing instruments.

REGULATORY ANALYSIS

The board has determined that this proposal is not a "major environmental rule" as defined by Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

TAKINGS IMPACT ASSESSMENT

The board has determined that the proposed rules do not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, do not constitute a taking under Government Code, §2007.043.

PUBLIC COMMENT

Comments on the proposal may be submitted to Stewart Myrick, Interim Executive Director, State Board of Examiners for Speech-Language Pathology and Audiology, Mail Code 1982, P.O. Box 149347, Austin, Texas 78714-9347. Comments may also be sent through email to speech@dshs.state.tx.us. Please write "Comments on Proposed Rules" in the subject line. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

STATUTORY AUTHORITY

The proposed new rules are authorized under Texas Occupations Code, §401.202, which provides the State Board of Examiners for Speech-Language Pathology and Audiology with the authority to adopt rules necessary to administer and enforce Texas Occupations Code, Chapter 401; as well as Texas Occupations Code, §401.2022, which specifically authorizes and requires the board to jointly adopt, with the committee, and with the assistance of the department, rules establishing requirements for the fitting and dispensing of hearing instruments using telepractice.

The proposed new rules affect Texas Occupations Code, Chapter 401.

Legend: (New Rules)

Single Underline = Proposed new language

Subchapter P. Joint Rules for Fitting And Dispensing Hearing Instruments By Telepractice.

§741.231. Purpose.

Pursuant to Texas Occupations Code, §401.2022 and §402.1023, the State Board of Examiners for Speech-Language Pathology and Audiology (board) and the State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments (committee), with the assistance of the department, are to adopt rules jointly to establish requirements for the fitting and dispensing of hearing instruments through the use of telepractice. The rules in this subchapter contain joint rules that set forth the requirements for the fitting and dispensing of hearing instruments through the use of telepractice.

§741.232. Definitions.

Unless the context clearly indicates otherwise, the following words and terms, when used in this subchapter, shall have the following meanings:

(1) Acts--Texas Occupations Code, Chapter 401, relating to Speech-Language Pathologists and Audiologists, and Texas Occupations Code, Chapter 402, relating to Hearing Instrument Fitters and Dispensers.

(2) Board--The State Board of Examiners for Speech-Language Pathology and Audiology.

(3) Client--A consumer or proposed consumer of services.

(4) Client site--The site at which the client is physically located.

(5) Committee--The State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments.

(6) Facilitator--The individual at the client site who assists with the delivery of telehealth services.

(7) Fitting and dispensing hearing instruments--The measurement of human hearing by the use of an audiometer or other means to make selections, adaptations, or sales of hearing instruments. The term includes the making of impressions for earmolds to be used as a part of the hearing instruments and any necessary post fitting counseling for the purpose of fitting and dispensing hearing instruments.

(8) Hearing instrument--Any wearable instrument or device designed for, or represented as, aiding, improving or correcting defective human hearing. This includes the instrument's parts and any attachment, including an earmold, or accessory to the instrument. The term does not include a battery or cord.

(9) Provider--An individual who holds a current, renewable, unrestricted audiology license under Texas Occupations Code, §401.302 and §401.304; an individual who holds an audiology intern license under Texas Occupations Code, §401.311; or an individual who holds a current, renewable, unrestricted license under Texas Occupations Code, Chapter 402, that authorizes the individual to fit and dispense hearing instruments without supervision.

(10) Provider site--The physical location of the provider of telehealth services which is distant or remote from the client site.

(11) Telecommunications--Interactive communication at a distance by concurrent two-way transmission, using telecommunications technology, of information, including, without limitation, sound, visual images, and/or computer data, between the client site and the provider site, and required to occur without a change in the form or content of the information, as sent and received, other than through encoding or encryption of the transmission itself for purposes of and to protect the transmission.

(12) Telecommunications technology--Computers and equipment, other than telephone, email or facsimile technology and equipment, used or capable of use for purposes of telecommunications. For purposes of this subchapter, the term includes, without limitation:

(A) compressed digital interactive video, audio, or data transmission;

(B) clinical data transmission using computer imaging by way of still-image capture and storage and forward; and

(C) other technology that facilitates the delivery of telehealth services.

(13) Telehealth services--The fitting and dispensing of hearing instruments through telepractice to a client who is physically located at a site other than the site where the provider is located.

(14) Telepractice--The use of telecommunications technology for the fitting and dispensing of hearing instruments.

§741.233. Requirements for Providing Telehealth Services for the Fitting and Dispensing of Hearing Instruments.

(a) Unless otherwise legally authorized to do so, an individual shall not render telehealth services from the State of Texas or to a client in the State of Texas, unless the individual qualifies as a provider as that term is defined in this subchapter and renders only those telehealth services that are within the course and scope of the provider's licensure and competence, and delivered in accordance with the requirements of that licensure and pursuant to the terms and conditions set forth in this section.

(b) The provider shall use only telecommunications technology that meets the definition of that term, as defined in this subchapter, to render telehealth services. Modes of communication that do not utilize such telecommunications technology, including telephone, facsimile, and email, may be used only as adjuncts.

(c) Subject to the requirements and limitations of this section, a provider may utilize a facilitator at the client site to assist the provider in rendering telehealth services.

(d) The provider shall be present at the provider site and shall be visible and audible to, and able to see and hear the client and the facilitator via telecommunications technology in synchronous, real-time interactions, even when receiving or sending data and other telecommunication transmissions in carrying out the telehealth services. The provider is responsible for the actions of the facilitator and shall monitor the client and oversee and direct the facilitator at all times during the telehealth session.

(e) The provider of telehealth services, prior to allowing a facilitator to assist the provider in rendering telehealth services, shall verify and document the facilitator's qualifications, training, and competence in each task the provider directs the facilitator to perform at the client site, and in the methodology and equipment the facilitator is to use at the client site.

(f) The facilitator may perform at the client site only the following tasks:

(1) those physical, administrative, and other tasks for which the provider has trained the facilitator in connection with the fitting or dispensing of hearing instruments for which no form of license, permit, authorization or exemption under either of the Acts is required; and

(2) a task for which the facilitator holds and acts in accordance with any license, permit, authorization or exemption required under either of the Acts to perform the task.

(g) A provider shall not render telehealth services to a client in those situations in which the presence of a facilitator is required for safe and effective service to the client and no qualified facilitator is available to the client during the telepractice session.

(h) The scope, nature, and quality of the telehealth services provided, including the assistance provided by the facilitator, shall be commensurate with the services the provider renders in person at the same physical location as the client.

(i) The provider shall not render telehealth services unless the telecommunications technology and equipment located at the client site and at the provider site are appropriate to the telehealth services to be rendered; are properly calibrated and in good working order; and are of sufficient quality to allow the provider to deliver equivalent fitting and dispensing service and quality to the client as if those services were provided in person at the same physical location. The provider shall only utilize telecommunications technology and other equipment for the provider's telepractice which the provider is competent to use.

(j) The initial professional contact between the provider and client shall be at the same physical location.

(k) Providers and facilitators involved in the provider's delivery of telehealth services shall comply with all laws, rules, and regulations governing the maintenance of client records, including client confidentiality requirements. Documentation of telehealth services shall include documentation of the date and nature of services performed by the provider by telepractice and of the assistive tasks of the facilitator.

(l) Except to the extent it imposes additional or more stringent requirements, this section does not affect the applicability of any other requirement or provision of law to which an individual is otherwise subject under this chapter or other law.