

Protecting Consumers of Hearing Instruments

*Report to the 2009 Minnesota Legislature
on the Certification of Hearing Instrument
Dispensers*

Minnesota Department of Health

January, 2009



Commissioner's Office
625 Robert St. N.
P.O. Box 64975
St. Paul, MN 55164-0975
(651) 201-4989
www.health.state.mn.us

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**For more information, contact:
Health Occupations Program
Compliance Monitoring Division
Minnesota Department of Health
85 East 7th Place, Suite 220
P.O. Box 64882
Saint Paul, Minnesota 55164-0882**

**Phone: (651) 201-3721
Fax: (651) 201-3839
TDD: (651) 201-5797**

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MDH Certification of Dispensers
January, 2009

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Executive Summary

This report complies with Minnesota Laws 2007, Chapter 147, Article 9, section 36 stating that fees related to hearing instrument dispensers may not be increased until after the Minnesota Department of Health provided a report to the Legislature regarding the need and reasons for any fee increase. As the regulatory activity certifying hearing instrument dispensers has a projected deficit of about -\$313,000 in state fiscal year 2010 based on current expenditures and revenues, it is necessary to request an adjustment to fees or take other corrective action to create a positive balance in the State Government Special Revenue account.

The purchase of a hearing instrument is unlike that of other commercial products and services in two respects: the consumer is most often elderly and hearing impaired; and the product is classified a medical device by the Food and Drug Administration. These attributes, in addition to the potential for economic harm because of their cost, are the primary reasons for protecting consumers of hearing instruments through Federal regulation of hearing aid dispensing activity and Minnesota regulation of the persons who dispense them.

Concerning Minnesota Department of Health activity protecting hearing aid consumers by regulating persons providing hearing instrument products and services, Staff in the Department responsible for the regulatory activities required by Minnesota Statutes Chapter 153A documented the following:

- The number of Minnesotans aged 65 or older who are or may be hearing aid consumers is currently over 150,000 and is projected to grow to over 400,000 by 2035.
- In 2006 Minnesotans purchased 52,323 hearing aids at an average price of \$1,912, for an estimated total value of over \$100 million.
- About 180 certified hearing instrument dispensers are estimated to have sold a combined total of over \$58 million worth of hearing instruments and services in Minnesota in 2006.
- The most frequent reason for a complaint to the Department is the dispenser's failure to make a timely refund when the consumer cancels the purchase agreement. Investigation of the complaint often reveals other issues such as dispenser promises to extend the consumer's trial period when the aid does not satisfy the consumer, the dispensing of hearing aids that are inappropriate for the consumer's hearing loss, and failures in accurately measuring the consumer's hearing loss and determining the need for hearing aids.
- The vast majority of certified dispensers (87%) do not currently have open complaints against them. However, the Department expends significant staff resources investigating complaints and enforcing regulations against persons who are not currently certified. About 25 percent of investigative staffs' time goes to investigative and enforcement activity against uncertified persons at an estimated cost of \$23,000 annually.
- There are currently no education, training or experience requirements in Minnesota's regulations to become a certified hearing instrument dispenser. Anyone 21 years or older may take the Department of Health's certification examination, and if passed, may qualify for certification to dispense hearing instruments.
- In 2006 and 2007, the overall pass rate for the practical or skill and performance portions of the certification examination was 27%.

- Current regulatory activity by MDH involves 2 FTE's, costing \$190,000 annually with revenues of \$96,000. The primary consumer protection activities include providing consumer information and assistance, investigating consumer complaints, annually certifying dispensers and examining applicants for certification.
- The cost of regulating hearing instrument dispensers has historically exceeded revenues because of substantial changes to regulations and extraordinary expenses for examination development and investigation/enforcement efforts. Currently, administration of the certification examination and investigation/enforcement activities regularly cost more than fee revenues support.
- Consumer protection and MDH certification efforts would be more effective with voluntary manufacturer verification of dispenser certification before sale of hearing aids to individuals for sale at retail.
- Changes to the certification regulations that would balance future costs and revenues include requiring education and training to qualify for examinations and increasing the examination fee. There is the possibility that directing some types of complaints to the Attorney General's Office may reduce investigation and enforcement costs.
- Other alternatives to raising certification fees of certified dispensers include a surcharge on each hearing aid sold, a sales-based fee on business revenues, and a general fund appropriation.

The Department of Health recommends that consistent with legislative policy for occupational regulation fees, annual certification and examination fees be adjusted to \$700 and \$500 respectively. This is an increase of 100 percent from current levels and will produce revenues at a level approximating costs involved in providing the consumer protection services. As current fees under recover the regulatory cost for hearing instrument consumer protection services, it is appropriate to establish a fee that will recover the cost. In addition, an annual surcharge of \$550 for two years is recommended to recover the current deficit.

Chapter 1

Background and Overview of Regulation

A. Aging Population In Minnesota and Estimated Hearing Aid Users.

The National Institute of Health (NIH) states that approximately 15%, or 32.5 million, of Americans say that they have some degree of hearing loss. Other sources estimate the percentage of the general population with a hearing loss to be nine to ten percent.¹ NIH also says that about one third of Americans 65 to 74 years of age and 47% of those 75 and older have hearing loss.²

Minnesota's population is currently estimated at just over 5.2 million, and is projected to grow to 5.7 million by 2015 and over 6.4 million by 2035. From 2005 to 2015, the fastest growth will be for ages 55 to 69. The over 65 population will more than double between 2005 and 2035, from 523,200 to 1.4 million.³ Though estimates vary regarding the percentage of the population with hearing loss, between now and 2035, the number of Minnesotans with hearing loss over age 65 is projected to grow more than 2.5 times to nearly one-half million people.

Although not all hearing loss is remediated with hearing aids (some deaf persons are not potential hearing aid purchasers), approximately 450,000 Minnesotans may be assumed to represent current actual and potential consumers for new or upgraded hearing instruments. The number of Minnesotans aged 65 or older who are or may be hearing aid consumers is currently over 150,000 and is projected to grow to over 400,000 by 2035.

B. Estimated Number and Cost of Hearing Aids Sold in Minnesota.

Table 1A represents hearing instrument unit sales in the State of Minnesota in the most recent calendar years for which data is available.⁴ These numbers do not correlate exactly to an estimate of the number of hearing aid users, as some individuals have one and others two hearing aids to address their hearing loss. Also, these numbers include hearing instruments sold by both dispensing audiologists and non-audiologist dispensers. As of October 2007 certified dispensers comprised 33% and licensed audiologists 67% of the health care practitioners authorized to serve consumers in Minnesota. A national dispenser survey found that the number of hearing instruments dispensed per month per dispenser (either audiologist or non-audiologist) was 15 in both 2005 and 2006.⁵

¹ Deaf and Hard of Hearing Services Division, DHS, citing Gallaudet Research Institute and advocacy organizations.

² National Institute of Health – Senior Health <http://nihseniorhealth.gov/hearingloss/faq/faq1a.html>

³ Minnesota Population Projections 2005 – 2035, Minnesota State Demographic Center, June 2007

⁴ The Hearing Journal, December 2006, Vol. 59, No. 12; December 2005, Vol. 58, No. 12; December 2004, Vol. 57, No. 12; December 2003, Vol. 56, No. 12. <http://www.thehearingjournal.com>

⁵ The Hearing Journal, April 2007, Vol 60, No. 4.

Table 1A
Number of Hearing Aids Sold in Minnesota
 Calendar Years 2003-2006

2003	2004	2005	2006
40,982	45,297	46,025	52,323

A national survey of dispensing audiologists and non-audiologist dispensers reported that the prices per hearing instrument bundled with services ranged from \$908 for the least sophisticated instrument to \$2,769 for the highest-end instrument in style, signal processing and product features. The average unit price for all hearing aids sold by all dispensers who bundled the cost of services with the price of the hearing instrument itself, regardless of style and technologic level, was \$1,912.⁶

Using this data, we calculate that:

- The total economic value of hearing instrument sales activity in Minnesota in 2006 was over \$100 million.
- Excluding dispensing audiologists, certified dispensers may have sold a combined total of over \$58 million worth of hearing instruments and services in Minnesota in 2006.⁷

C. Regulation of Hearing Instrument Dispensing in Minnesota.

In 1988 the Minnesota Legislature determined that it was necessary to protect potential and actual purchasers of hearing instruments, and it passed Minnesota Statutes, Chapter 153A regulating any person who dispensed hearing instruments. The law required that all dispensers, regardless of any other professional credentials, obtain a permit from the Commissioner of Health to sell hearing instruments. Thus, anyone who sold hearing aids at retail, including medical doctors, chiropractors and audiologists were required to obtain a permit. Other important aspects of the law are as follows:

- Prior to 1993, there were no minimum requirements for obtaining a permit. Anyone 21 years or older, regardless of education or training, could qualify for a permit.
- In 1993 the Legislature converted the permit to certification and required the passing of written and practical examinations of knowledge and dispensing skills. Even so, there are currently no education, training or experience requirements in the certification regulations. Today, anyone may apply and take the certification examinations.
- Also in 1993, a law change authorized “trainees” to dispense hearing instruments under supervision of a certified dispenser. Though trainee status was created as a method of entry to the occupation in lieu of requiring formal education and training, many persons taking the certification examinations were never dispenser trainees.

⁶ Ibid.

⁷ Figure calculated as average price of \$1,912, times average of 15 aids sold per month in 2006, times 169 certified dispensers in calendar year 2006. Though there are twice as many audiologists as non-audiologist dispensers, not all audiologists dispense hearing instruments, and of those that do, other audiological services are provided and not bundled into the price of devices sold.

- Other changes in the law in 1993 strengthened consumer protection measures. A new provision required dispensers to give a consumer rights brochure to each potential buyer of a hearing instrument. The brochure is written by MDH and contains information about legal requirements pertaining to sales of hearing instruments. The law requires dispensers to obtain on the contract of sale the signature of hearing aid purchasers indicating receipt of the brochure. The brochure contains the address and toll free number for contacting MDH for information, assistance and to make a complaint about a dispenser or hearing aid sales activity.
- In 2005 the Legislature removed the requirement for licensed audiologists to also be certified hearing instrument dispensers. The number of practitioners in the certification system fell from over 410 at the end of 2004 to 170 at year-end 2005. At that time only five audiologists were certified, because they must be certified to supervise dispenser trainees. There were then 367 licensed audiologists in Minnesota, and 298 of these practitioners also dispensed hearing instruments under the scope of their license. Table 1B details the number and types of dispensers in Minnesota from 2004 through year-end 2007.

There is not currently any report of a shortage of hearing instrument dispensers in Minnesota, though in outstate areas, persons may need to travel some distance for access to services. Both certified dispensers and licensed audiologists appear to be distributed equally across the state. Appendix 1 contains a map showing the location by zip code of persons authorized to dispense hearing instruments in Minnesota as of March 2007.

Table 1B
Types and Numbers of Persons Authorized in Minnesota
to Dispense Hearing Instruments

Practitioner Type	CY'04	CY'05	CY'06	CY'07
Certified Dispensers	155	158	169	175
Dispenser Trainees	30	12	12	7
Certified Audiologists	225	12	5	5
Licensed Audiologists	345	341	349	367
Licensed Dispensing Audiologists	N/A	N/A	N/A	298
Temp Licensed Dispensing Audiologists	N/A	N/A	N/A	18
Total Dispensing Practitioners	410	N/A	N/A	498

N/A: Figures not available.

D. Regulation in Other States.

All states and the District of Columbia require hearing instrument dispensers to hold a license, certificate or other credential to dispense hearing instruments. In addition, twenty states and the District of Columbia also require audiologists to hold a hearing instrument dispensing license to dispense hearing instruments.⁸

⁸ Sources: International Hearing Society, Licensing Board Contacts for Hearing Aid Specialists, August 27, 2007, http://ihsinfo.org/IhsV2/Communities_Chapters/Licensing%20contacts_web.pdf American Speech Language Association, State Licensure Trends, <http://www.asha.org/about/legislation-advocacy/state/>

Chapter 2

Protecting Hearing Instrument Consumers

This Chapter describes the overall regulatory scheme and major activities comprising the Hearing Instrument Dispenser Certification system as recently and currently conducted by the Health Occupations Program in the Minnesota Department of Health. The following information gives an overview of certification activities, details provision of consumer information and assistance, the administration of certification examinations and credentialing, and analyzes complaint activity in the investigation and enforcement area.

A. Overview of Hearing Instrument Dispenser Certification Activities.

The Health Occupations Program in the Minnesota Department of Health's Division of Compliance Monitoring administers the Hearing Instrument Certification system. Table 2A below provides a summary of the staffing, costs and revenues for fiscal years 2005 to 2007 for each of the categories of activities listed.

Table 2A
Hearing Instrument Dispenser Certification System
 Summary of Staffing, Costs & Revenues (SFY '05 - '07)

Activity/Fiscal Years	Staff FTE's			Costs (\$000)			Revenues (\$000)		
	'05	'06	'07	'05	'06	'07	'05	'06	'07
Information/Assistance	.50	.51	.51	33	34	32	0	0	0
Examinations	.40	.35	.35	38	42	35	24	21	24
Credentialing	.60	.30	.20	56	33	32	152	69	70
Investigation/Enforcement	.25	1.05	.95	31	93	91	0	15	2
FY Totals	1.75	2.21	2.01	\$158	\$202	\$190	\$176	\$105	\$96

Notes: FY'06 Exam cost includes Attorney General's Office and Office of Administrative Hearings costs of \$6,000 for an appeal of failing score results. FY'06 and '07 Revenues declined significantly because 230 fewer audiologists were certified than in SFY'05.

Within the categories listed above, the following regulatory activities occur and are described in further detail in the sections that follow below:

Information and Assistance: through phone calls, emails and mailings, administrative support, credentialing and investigative staff answer questions and requests from potential and actual purchasers of hearing instruments.

Examinations: processing applications for written and practical examinations that are administered every three months;

Credentialing: annual issuance of certification credentials; annual audits of continuing education reports; administration of four advisory council meetings per year; depositing fees, data entry and providing consumer information and assistance in response to phone call and email requests;

Investigation and Enforcement: investigation of allegations of unethical, unprofessional and incompetent dispensing practice; convening competency review committee meetings as needed to pursue investigations and enforcement actions; and discipline of dispensers for illegal conduct.

B. Information and Assistance.

In a process called “intake,” administrative support staff are the first point of contact for three primary types of inquiries concerning hearing instrument dispensing and consumer-related services. Usually by phone, but increasingly by email, these inquiries are from consumers, examination applicants and certified dispensers. Administrative support staff may or may not refer callers to staff responsible for credentialing, examinations or investigations. Calls may be very brief (five minutes) or lengthy (up to 45 minutes), and callers may make repeated contacts depending upon their needs. The following numbered sections provide information on the nature and content of inquiries from the certification system’s primary constituencies.

1. Consumer Information Center.

Hearing Aid Consumers call or write to obtain several types of information or assistance. The majority of consumers who contact the Department seeking information utilize the Department’s toll free and general phone numbers included on the Hearing Aid Consumer Brochure and on the Department’s website. On occasion, the Department receives calls from consumers who utilize the MN Relay service or TDD/TYY. The Department receives correspondence via US mail, the website or through electronic mail. Inquiries fall into three main categories:

- consumers who are interested in purchasing a hearing instrument and want literature (Appendix 3 contains a list of the materials disseminated);
- consumers who have identified a hearing instrument dispenser and want to check credentials and/or discuss their purchasing and return rights; and
- consumers who have already purchased a hearing instrument and have questions about their purchase agreement, the MDH brochure or complaints about the sales transaction.

Most hearing aid consumers contacting the department are elderly, and their ability to communicate may vary widely. Generally, Department staff must assist these callers with additional patience and helpfulness: it not uncommon to assist hearing aid consumers who speak very slowly, repeat information and are confused in their understanding of the details, timing and nature of events involved in their hearing aid purchase. In many cases an advocate (family member, friend or neighbor) contacts the Department on behalf of the consumer because of their vulnerability and/or difficulty communicating.

The Consumer Information Center often receives more calls after holidays when visiting relatives and friends learn that a new hearing aid was recently purchased, how much it cost, and that hearing does not appear to be improved. Other trends in phone calls show increases in July and August coinciding with dispenser promotions and advertisements. Consumer calls taper off in February and March, and then pick up in April. Details concerning types and numbers of requests from consumers for various periods are shown in Appendix 4. In summary, the Department’s consumer intake records show:

- Most calls to the Consumer Information Center are from consumers requesting copies of the Department’s Legal Rights and Consumer Information brochure and other literature; and
- Advocates call on behalf of consumers in nearly 25% of the inquiries received.

Other consumer information and assistance activities in addition to phone calls include the following:

a. Consumer brochure:

The consumer brochure was first developed in summer 1990, and was revised periodically to update phone numbers and addresses. In 1999 a Speech-Hearing Committee comprised of audiologists, non-audiology dispensers and consumers substantially revised the brochure after many months of discussion. The changes were then reviewed and approved by the Commissioner. In 2005 the brochure was updated to reflect technical changes in the regulations, and at that time it was also decided that more substantial revisions were needed. The current version of the brochure is reproduced in Appendix 5.⁹ The costs of producing and disseminating the consumer brochure are included in the figures for Consumer Information and Assistance in Table 2 above, but were not recorded or calculated separately.

b. Mailings:

The Hearing Aid Consumer Brochure is one of several items mailed to consumers in response to requests for information related to hearing instruments. Mailings are important because the current population of elderly do not have a comfort level or access to technology for email or web site information. Other items included in packets sent to consumers are publications from the Food and Drug Administration, the Federal Trade Commission, the Deaf and Hard of Hearing Services Division of the Minnesota Department of Human Services, the Commission Serving Deaf and Hard of Hearing People, a list of financial resources, a conciliation court booklet produced by the Office of the Minnesota Attorney General, and a Minnesota Department of Health complaint form. Appendix 3 lists the items included in mailings.

c. Web Site:

The Department of Health has created and maintains a web site for hearing instrument consumers which links to the web sites of organizations providing the print resources mentioned above. A copy of the web page is reproduced in Appendix 6. This methodology for disseminating information is available at all times, is not as dependent on Department staff assistance and is therefore more cost-effective, and may show greater utilization in coming years.

2. Examination Applicants.

Individuals who want an application for the hearing instrument certification examinations contact the Department by phone or email. Examinations are scheduled and administered four times each year. These inquiries are referred to the credentialing staff responsible for administration of the certification examinations. These inquiries may take five to 15 minutes to answer. However, not infrequently after exam applications are mailed to individuals who have requested them, applicants will call repeatedly, several times in a day, and daily or nearly daily over a one to two week period. For the last three years and currently, demand for exam space has exceeded supply, and the resulting anxiety about opportunity to take the exam as well as preparing for the exam creates a greater need for staff assistance.

⁹After six months of effort at drafting, receiving comments and making changes, it was clear that obtaining consensus from stakeholders by means of routing successive edited versions would not succeed. A meeting of interested persons was convened to resolve differences in viewpoints, content, language and format. Several more drafts, reviews by both audiology and certified dispenser advisory councils and final approval by the MDH information office resulted in completion of the current version of the brochure in September 2006.

3. Hearing Instrument Dispensers.

Individuals who have passed examinations call or email to obtain information and forms related to applying for initial certification, and certified dispensers call concerning renewal of certification and for submitting continuing education reports. Renewal of certification occurs annually. Also applicants for initial certification contact us by phone or email. These contacts rise and fall in relation to the release of examination results that occur four times per year. These inquiries are referred to the credentialing staff responsible for certification. In conjunction with these activities, credentialing staff respond to email and phone call requests which may take five to 15 minutes to answer, and which may be repeated by the same individual several times a day, and daily or nearly daily over a one to two week period.

C. Certification Examination and Exam Administration.

Written and practical examinations are the sole requirement for obtaining hearing instrument dispenser certification.¹⁰ The purpose of the examination requirement is to assure a minimum level of competency so that the dispenser performs the activities comprising dispensing with the least risk of harm to the consumer. Currently there are no pre-requisites to taking the written and practical examinations, and anyone may apply to take the examinations with or without prior formal or informal education or training.

Appendix 7 shows the results of eight administrations of examinations offered in fiscal years 2006 and 2007. In summary:

- The overall pass rate for the examinations (written and practical) qualifying for certification as a hearing instrument dispenser is 46%.
- The overall pass rate for the written exam (testing basic physics of sound, anatomy and physiology of the ear, the functions of hearing instruments. and the principles of hearing instrument selection) is 75%.
- The overall pass rate for the practical exam (testing audiometry, hearing instrument trouble shooting, Minnesota and federal laws regulating hearing instrument dispensing and ear mold impression taking and fitting) is 27%.
- The portion of the practical exam most difficult for examinees to pass is audiometry,¹¹ where a 100% failure rate frequently occurs.

In view of these results, the Department concludes that requiring a minimum amount of education and specific training would improve examination outcomes. Until recently, consensus had not been reached on education and training requirements. Though there is now agreement that requirements to sit for examinations are needed, defining the content and type

¹⁰ Examinations to become certified were first required in the regulations in 1993. Prior to 1993, there were no requirements related to knowledge, skill or competency to qualify for a credential to dispense hearing instruments. Neither was a background check required. Anyone 21 years or older could obtain a permit.

¹¹ The audiometry section of the practical examination is comprised of a performance test and a written test. Tasks in the performance test are designed to evaluate the candidate's ability to conduct pure tone audiometric tests, including obtaining valid pure tone air and bone conduction thresholds using the modified Hughson-Westlake technique, and masking procedures as necessary; correctly prepare audiograms; set up an audiometer for speech testing; and conduct speech audiometric tests. Also, the candidate is expected to interview clients appropriately and identify ear conditions requiring medical referrals. The written test is designed to evaluate the candidate's ability to interpret three completed audiograms and identify the need for masking in order to obtain a valid hearing threshold in air and bone conduction measurement and additionally, explain the reason for doing so.

of education and training appropriate is not completed. The Department, through its Advisory Council, expects to reach consensus on qualifications to take the dispensing examinations in 2009.

As shown in Table 2A, examination expenses consistently exceed examination revenues, and the examination expenses are therefore a major contributor to total annual operating deficits. (This matter is discussed in greater detail in Chapter 3. B.2.) As described earlier, the examination consists of two parts: written and practical. The Department uses a written examination created, owned and made available by the International Hearing Society. Each written exam costs \$95, and this price includes scoring and reporting results to MDH. The Department created, owns and uses a practical examination that it developed in the mid-1990's. A national practical exam was not and still is not available to provide performance-based testing of skill, knowledge and competence as required by statute. An Examination Committee of audiologist and non-audiologist dispensers updates and makes changes to the exam; the Committee has also been convened to address appeals of exam results by persons failing the practical exam.

D. Credentialing Activities.

Credentialing activities are so named because they involve the processing of applications for certification (initial and renewal) and for trainee status. All requirements and procedures are set forth in Minn. Stat. Ch. 153A. A person does not apply for certification unless they have taken and passed the written and practical examinations. A person may apply for trainee status and dispense hearing instruments under supervision of a certified dispenser for a one-year period. The statute does not require a person to be or have been a trainee in order to apply for certification or to take the certification exams.

Appendix 8 contains data showing the number of certifications issued in fiscal years 2004 through 2007, and the number of trainees representing potential new applicants for certification. The data in Appendix 8 shows that:

- The number of certified hearing instrument dispensers (excluding audiologists) did not exceed 175 until FY2007, when 178 persons were certified.
- The number of trainees has steadily and significantly declined each year, from a high of 35 at fiscal year end in 2004 to 12 at the end of FY2007.

The credentialing function also includes other activities in addition to processing new trainee and certification applications throughout the year and renewing certifications annually. Renewal of certification requires submission of continuing education reports. These reports are reviewed for compliance with requirements. Approximately 10% of renewals are late and an equal percentage of continuing education reports are noncompliant. These are assessed penalty fees calculated on the degree of the violations.

Finally, credentialing includes staffing and conducting quarterly advisory council meetings each year. At these meetings staff report statistics on credentialing activity, examinations, investigation of complaints and enforcement actions and budget, expenditure and revenue numbers. Agendas for these meetings also include discussion of issues relating to regulatory requirements and effects of regulations on certified dispensers and their business. Issues related to consumer protection are also regular agenda subjects.

E. Investigation and Enforcement Activities.

Most investigation and enforcement activities begin by a consumer complaint. Consistent with the data on inquiries to the Consumer Information Center, data collected concerning written complaints about hearing instrument dispensing reveals a significant number submitted by advocates for the consumer. Generally 25% or more of the complaints are submitted by a relative, friend, another professional or agency instead of the person who purchased the hearing instrument.

Table 2B summarizes the types of allegations made by consumers in written complaints to the Department. The most frequent reason for a complaint to the Department is the dispenser’s failure to make a timely refund when the consumer cancels the purchase agreement. Investigation of the complaint often reveals other issues such as dispenser failure to honor terms of extensions to the consumer’s trial period when the aid does not satisfy the consumer, the dispensing of hearing aids that are inappropriate for the consumer’s hearing loss, and failures in accurately measuring the consumer’s hearing loss and determining the need for hearing aids.

Table 2B
Types of Allegations in Consumer Complaints
 FY’05 – FY’08

Allegations Received & Investigations Opened	FY 2005	FY 2006	FY 2007	FY 2008
Intakes Received - Allegations	44	47	44	45
Investigations Opened – Allegation	23	20	21	16
Type of Allegations:				
False or misleading advertising, high pressure sales, deception or fraud		2	3	6
Failure to follow hearing testing protocol, FTC or FDA regulations, including issues related to health records & documentation		3	5	4
Conduct likely to deceive, defraud or harm public including incompetence or negligence	9	4	8	2
Failed to provide timely refund, including incorrect contract language, product and repair	13	10	6	6
Illegal practice, continuing education, application issues	2	4	4	2

As shown previously in Table 2A, an average of one full time staff person was committed to investigation and enforcement activities in SFY’06 and ’07. Table 2C below provides detailed information on the types and levels of performance occurring in this activity.

Table 2C
Investigation and Enforcement Activity
Opened, Closed and Pending Investigations & Enforcement Actions
FY'05 – FY'08

ACTIVITY	FY2005	FY 2006	FY 2007	FY 2008
Intakes Received – Allegations in Year	44	47	44	45
Investigations Opened – Allegation in Year	22	20	21	16
Investigations Closed in Year	7	12	18	23
Investigations Pending as of Year:	73	81	84	77
Enforcement Actions Opened in Year	1	3	5	2
Enforcement Actions Closed in Year	0	3	3	1
Enforcement Actions Pending as of	2	2	4	5
Total Cases Pending as of	75	83	88	82

There are three primary avenues consumers and practitioners utilize to file a complaint about hearing instrument dispensers. The first and most often used method is by phone call received through the Consumer Information Center; the second is via the web site where consumers can print out a complaint form and mail it; and the third is by a direct phone call to the Investigator.

Not every phone call and allegation about dispensing conduct results in opening an investigation. Intake staff asks and answers questions, screens information to determine that the practitioner involved and the conduct are regulated by the certification system and may arrange to send the consumer rights brochure and information packet to callers. Through the information and assistance provided in phone conversations, mailings and the web-site, approximately 50% of the contacts in the intake process result in callers being able to help themselves. However, receipt of a written complaint does trigger the opening of an investigation. The intake, investigation and enforcement processes are described in more detail in Appendix 9.

Table 2C indicates that the number of allegations received and investigations opened have been fairly constant over the three and one quarter years shown. Investigations closed and enforcement actions completed fluctuate over the period and are dependant on staff resources and the complexity of the cases. The Department has authority to and must investigate any allegation concerning a person dispensing hearing instruments, certified or not. Findings from an analysis of dispensers subject of open and pending complaints as of September 30, 2007 are presented in Tables 2D and 2E.

Table 2D
Consumer Complaints Against
Persons Not Authorized to Dispense
As of September 30, 2007

Status of Dispenser*	Dispensers		Complaint Investigations	
	Number	Percent	Number	Percent
Currently Certified	25	61	37	54
Not Authorized to Dispense:	16	39	32	46
Never Certified	5	12	13	19
Certification Denied	1	2	9	13
Certification Expired	5	12	5	7
Trainee Status Expired	5	12	5	7
TOTALS	41	100	69	100

* For purposes of this table only, a Dispenser is a person who sold or attempted to sell a hearing instrument to a consumer. These figures do not include complaints against licensed audiologists or unlicensed persons with audiology training.

- Table 2D shows that as of September 30, 2007, 39 percent of the persons subject of open consumer complaints were not certified. More significantly, these persons accounted for 46 percent (32 of 69) of the open complaints under investigation at that time.

Table 2E
Distribution of Open Consumer Complaints Between
Certified Dispensers* & Persons Not Certified
As of September 30, 2007

Number of Open Complaints N=24	Persons Not Certified N = 16	Dispensers Certified N=184	Total Open Complaints N=61
9	1	0	9
5	1	0	5
4	0	2	8
3	2	1	9
2	0	4	8
1	12	18	30
0	0	159	0

* For purposes of this table, a Dispenser is a person who sold or attempted to sell a hearing instrument to a consumer. These figures do not include complaints against licensed audiologists or unlicensed persons with audiology training.

- Table 2E shows that as of September 30, 2007, one uncertified person had nine open complaints against them; another had five complaints. Twelve uncertified persons had one open complaint.
- The vast majority of certified dispensers, 159 or 87%, did not have any open complaints against them.
- Together, Tables 2D and 2E show that the Department has spent a significant portion of its investigative staff resources on complaints and enforcement action against persons who were not currently certified.

The certification regulations require the Department to investigate every consumer complaint, and, under current statute, the costs of investigation and enforcement are required to be paid for by fees from certified dispensers.

- The Department estimates that 25 percent of investigative staffs' time goes to investigative and enforcement activity against uncertified persons. The cost of these efforts is approximately \$23,000 per year.

The cost of investigating complaints is primarily the cost of investigative staff time, but may also include per diems to advisory council members, copy costs, Attorney General and contested case hearing expenses. During the investigation of complaints, Staff often utilizes the expertise of practitioner members of the Hearing Instrument Dispenser Certification Advisory Council. These practitioner members and a consumer member constitute the Competency Review Committee (CRC), and their purpose is to assist the investigator in analyzing dispensing records and audiometric data, identifying conduct evidencing lack of competence and advising on appropriate remedies for resolving complaint allegations, including alternatives for holding the practitioner accountable for any incompetent or illegal practices. Table 2F shows the level of activity of the CRC.

Table 2F
Competency Review Committee Activity
FY'05 – FY'08

Hearing Instrument Dispenser Advisory Council Competency Review Committee Meetings	FY 05	FY 06	FY 07	FY 08
Number of HID CRC meetings	2	2	2	3
Number of Practitioners discussed	4	6	7	15
Number of Investigations reviewed	9	7	9	14 ¹²

In the next chapter several sections illustrate consumer harm, the complexity of complaint investigations when numerous consumers are affected or harmed by dispensing activities, and the time involved in obtaining and analyzing records, including items such as purchase agreements, audiograms and related hearing testing records, invoices from the manufacturers, and service and warranty plans. Following investigation, staff must negotiate settlement agreements, prepare for a contested case hearing if requested by the practitioner, or monitor the settlement agreement.

¹² In one investigation, the HID CRC reviewed 20 audiograms and related hearing tests representing twelve consumers, which was approximately 15% of the audiograms submitted during the investigation.

Chapter 3

Paying For Hearing Aid Consumer Protection

A. Why Do Regulatory Costs Exceed Revenues?

The factors most affecting regulatory costs in the Hearing Instrument Dispenser Certification system are implementation of significant changes to regulations, administration of examinations and investigation of consumer complaints.

1. Changing Regulations, Increased Expenses.

Budgeting and setting fees so that year to year revenues approximate expenditures is difficult when there are unpredictable and relatively frequent fluctuations in expenditures, numbers of practitioners, and fee revenues. These kinds of changes produce extremes of alternating annual deficits and surpluses. Appendix 2 shows the total annual expenditures, revenues and account balances for regulating hearing instrument dispensers from inception of regulation in 1988 through SFY 2008. There is a correlation among implementation of significant changes in regulations, increases in operating expenditures in a given year and resulting deficits when revenues are constant or decrease because of changes. Examples detailed in Appendix 2 include converting the permit to a certification requirement in 1994, development of the practical examination in 1995 and 1996, an enforcement action and contested case hearing in 1996 and 1997, and the removal of audiologists from the certification system in the 2005 legislative session that took effect in fiscal year 2006.

Currently, certification fees and revenues have not been adjusted to account for the 2005 legislative changes which reduced the number of certified dispensers from 410 at the end of 2004 to 158 at the end of 2005, while exam administration expenses remained constant and investigation costs increased.

2. Certification Examination.

Administration of the practical examination is expensive because it is labor intensive. Each practical exam administration requires recruiting and securing raters who are certified dispensers and licensed audiologists. New raters required training by current raters and Department staff. Each rater is paid \$12/hour for eight to ten hours the day of the exam. The Department supervises the written exam, directs exam candidates through practical exam stations and proctors or assists raters in administering portions of the practical exam.

Following the examinations, the Department employs a consultant to score the practical exams, tabulates the scores, and produces and mails a score report to each examinee. Examinees who fail one or more portions of the exam frequently request additional information concerning the failing score(s).

The Department has had eight challenges to the practical examination between 2004 and 2006. Responding to each challenge involved an investigation and written answers to allegations. One challenge advanced to completing preparation for a contested case hearing before the individual withdrew. Most challenges are made by individuals who fail one or more portions of the examinations three times within a two year period, and who by statute

must wait one year before applying to retake all portions of the exam. Challenges declined substantially in 2007, in large part because the Department has successfully defended its practical exam on grounds it is fairly and consistently administered.

3. Investigation and Enforcement Activities.

It is also labor intensive and time consuming to investigate complaints and take enforcement actions against dispensers found to have violated the standards for ethical and competent practice. As indicated in Table 2A, an average of one full time staff person was committed to investigation and enforcement activities in SFY'06 and '07. The following synopses of two cases illustrate the complexity and effort of this work. Most often the initial concern expressed by the consumer begins an investigation that then reveals dispenser conduct that is unprofessional or incompetent or both. It is not uncommon that the Department finds evidence that a dispenser sells a hearing instrument to a consumer who has a condition (for example, a significant unilateral hearing loss and an air-bone gap) that FDA regulations require the dispenser to refer the consumer to a licensed physician prior to recommending and fitting a hearing instrument. Because of data practices requirements, the following examples do not include current cases, but they do represent current pending investigations and enforcement actions.

a. Dispenser not Certified and Consumer Harm.

In 2004 and 2005, the Department received consumer complaints concerning sales of hearing aids by a person who was not certified. Investigation found that the individual dispensed hearing instruments to twenty-one consumers with total purchases amounting to \$45,807.00. In the sales transactions, only one consumer was given the required 30-day guarantee and buyer right to cancel, and only one consumer signed the required FDA waiver. None of the consumers were given the MDH consumer rights brochure.

The individual involved in this case had previously been disciplined by the Department for dispensing hearing instruments without a certificate in October 1995 and June 1996. Even though the person had also entered into a plea agreement with Grant County after pleading guilty to a misdemeanor for dispensing instruments without a valid certificate, in February 2005, the person again placed advertisements for hearing aids in local newspapers and held himself out as a "licensed hearing aid specialist." Under the terms of a stipulation and consent order entered in August 2005 the individual was ordered again to cease dispensing in Minnesota, cease advertising and representing that he can legally dispense in Minnesota, pay a civil penalty of \$9,947.00, and mail a letter to all current and past customers notifying them he is not allowed to dispense in Minnesota. Department staff is currently monitoring monthly payments related to the civil penalty.

This case illustrates the relative ease with which consumers can be led to deal with a person not qualified by the department to dispense hearing instruments. The case also shows that the dispensing regulations do not prevent occurrence of harm, and that the Department's consumer education and outreach efforts can effectively protect consumers and assure that they know their legal rights when purchasing hearing instruments. Finally, the case makes a point of the fact that although hearing aids are classified as medical devices and required by state law to be sold by certified or

licensed practitioners, anyone can obtain hearing aids from manufacturers for sale at retail.

Each year the Department receives inquiries and complaints about hearing aids sold by businesses in catalogues, over the internet or through “mail order” solicitations. If the sale does not involve a dispensing person in Minnesota, the Department does not have jurisdiction, though it does refer these matters to the Minnesota Attorney General’s Office and Federal Trade Commission. A more effective solution to this situation and the harm to consumers flowing from transactions not involving face-to-face consumer-dispenser contact would be voluntary action by manufacturers to not sell product to persons they do not verify as state-credentialed dispensers.

b. Business Incompetence and Failure.

Following receipt of complaints from consumers that a dispenser was not refunding payments in a timely manner on hearing aids returned and sales cancelled, the Department found that the dispenser had conducted an advertising and sales campaign and completed 35 sales of hearing aids worth over \$112,000 between an August 1st and September 31st time period when he was not certified. Following a contested case hearing an administrative law judge found in favor of the Department’s denial of certification on grounds that Practitioner had been subject to numerous stipulation and consent orders regarding failure to timely refund consumers as required by law and that practitioner sold approximately 35 hearing instruments without valid certification to dispense hearing instruments. The Commissioner ordered the Practitioner to pay \$12,724.20 for the cost of the investigation and a civil penalty of \$3,500 for 35 sales of hearing instruments without a certificate. The Practitioner was also to be denied a certificate to dispense hearing instruments for a period of two years. To date, the Practitioner has not paid the penalties, and the individual is not certified to dispense hearing instruments. The Practitioner’s business ceased operations, and currently the Department has no evidence that the Practitioner is working in Minnesota.

B. What Changes to the Certification System Might Reduce Costs?

1. Change Certification or Examination Requirements.

Current regulations do not require applicants to obtain and document a minimum level of education (high school graduation is not required) or other training in order to take the written or practical examinations, or to qualify for certification. The extremely high rate of failure by certified dispensers on the practical examination we cited in Chapter 2. D, suggests that formal education and training would result in improved pass rates on the examination. As shown in Appendix 7, the failure rate for audiometry for persons without audiology training who failed one or more parts of the practical exam in FY’06 and FY’07 has been 100% in six of eight administrations of the audiometry portion. Audiometric testing measures degree of hearing loss, and improved skill and competence in this area would likely reduce the number of consumer complaints of dissatisfaction with products and services.

The topic of establishing training and education requirements for examination and/or certification has been frequently raised in Advisory Council meetings and other forums. As

referenced above, in Chapter 2, D, we stated that some consensus has been reached to consider some form of training and education requirements.

2. Change Examination Administration.

The Department currently proctors the written examination it purchases, and administers the practical examination it developed and owns. In the practical examination, the Department uses certified hearing instrument dispensers and licensed audiologists that it trains and pays to rate examinee performance of skills and tasks required to safely dispense. It has been suggested that the Department contract out administration of both examinations to save its effort and expenses, and to have examinees deal with an independent testing organization. However, a practical exam is not available in the public domain. Contracting out administration of the Department's exam would not likely cost less. Though a significant amount of staff time is committed to exam administration, offsetting the expenses are savings realized by the Department utilizing its physical facilities to conduct the exam, paying its raters an amount far less than the hourly wage they could demand as experts hired by a testing organization and, in the event of examinee challenges to fairness and consistency in conducting the practical exam, having direct observation and knowledge of contested events.

It has also been suggested that two instead of four administrations of the exam would reduce costs. While this would halve the total annual cost of administering examinations, it would also reduce the revenue while not reducing the costs of each exam administration. As noted in Chapter 2, D., demand for examination opportunities exceeds the 100 spots available each year. For this reason alone, the Department has not reduced the number of examination administrations to the minimum of two required by statute. Indeed in 2004, the Department increased the number of annual exam administrations from three to four. The Department believes, following discussion with its Advisory Councils, that increasing the exam fee is the best way to address the cost issue. Advisory Council members agree that a higher fee would create incentive for candidates to take the exam after adequate preparation, rather than using the exam as a learning tool and a check on what the dispenser does not know.

3. Use the Attorney General's Office for Some Complaints.

As noted in the information in Section F of Chapter 1, almost 50% of the complaints currently being investigated in the certification system involve persons who are not currently certified, and that the vast majority of certified dispensers do not currently have complaints against them. It may be argued that the costs of investigation and enforcement of complaints against uncertified persons should not be borne by dispensers who comply with the certification requirements. Department staff has internally discussed seeking assistance from the Consumer Division of the Attorney General's Office for cases involving these individuals. However, not all cases currently involving uncertified persons can be easily segregated. In some cases, the dispenser was either certified or a trainee when complaints were received. A change in the status of the dispenser involved doesn't change the appropriateness of employing the Department and its advisory council's expertise in closing the case. Another consideration is whether delegating or transferring cases and using Attorney General's Office resources would also require a transfer of funds. If so, no cost reductions would be achieved. Nevertheless, the Department intends to explore this option for cases in which the dispenser who is subject of the complaint was never certified.

C. What Are Possible Alternatives for Generating Adequate Revenues?

The alternative of increasing current fees was proposed in the 2007 Legislative Session and did not pass out of policy and budget committees in either House or Senate. Concern was raised about the amount of the increase requested by the Department. In addition to increasing fees, the following sections discuss the pros and cons of three other alternatives that could be considered.

1. Increase Current Fees.

Fee adjustments are consistent with the legislative policy that practitioners in each occupation pay the costs of regulating. The reasonableness and fairness of this policy is tested when the occupational group has relatively few members to cover regulatory costs. In the recent past, the Legislature followed its policy and required that hearing instrument dispensers pay the cost of investigation and enforcement actions arising from complaints from their consumers. Further, the Legislature required that these costs not be borne by or shared with audiologist dispensers when, from 1998 through 2003, it established the annual fee (certification plus a surcharge) for dispensers who were not audiologists at \$820 while audiologists paid \$330.

Another pertinent consideration is the fee that certified hearing instrument dispensers can reasonably and fairly afford. Two sources indicate that hearing aid dispenser average annual salaries range from \$40,000 to \$120,000.¹³ The background section of this report presented national survey data for all dispensing practitioners indicating that an average of 15 hearing instruments, each at an average price of \$1,912, were sold per dispenser per month. This calculates to hearing instrument sales revenues of \$28,680 per month or \$344,160 per year per dispenser. Subtracting a 100% markup on the manufacturer cost of the hearing instrument leaves \$172,000 for paying other business costs. Total annual certification fees in the amounts proposed in the budget in Appendix 8 to take effect in FY2010 would comprise just over one-half of one percent for two years, and just over three tenths of a percent thereafter.

2. Assess a Surcharge Based on Each Hearing Instrument Sold.

The Department has discussed the idea of legislation that would place a surcharge on every hearing instrument sold. The amount of the surcharge would be calculated using the hearing instrument survey data stated above. This option may be perceived as a more equitable method of raising revenues because it would be based on each dispenser's sales volume. Each dispenser's certification fee would be more directly related to ability to pay. However, some certified dispensers are business owners; others are employees, while others may operate as independent contractors. Thus, the surcharge might most appropriately be paid by the business entity. Currently, the Department has jurisdiction only over dispensing individuals, not businesses, and it would require legislative authority to expand the regulation.

This approach would require determining a cost effective way to assess and collect the appropriate amount. Using a method similar to the 2% provider tax on health care services collected by the Department of Revenue has been suggested. However, the collection method must assure that the surcharge attach only to hearing instruments sold by certified dispensers and exclude product sold by dispensing audiologists. Each licensed audiologist already pays

¹³ Answers.com: <http://www.answers.com/topic/hearing-aid-dispenser>, March 9, 2007

Payscale: http://www.payscale.com/research/US/Industry=Hearing_Aid_Dispensing/Salary, March 9, 2007

a surcharge fee to cover the costs of licensing that are attributable to hearing instrument dispensing consumer protection activities. Another consideration is whether this type of collection mechanism is cost-effective for less than 200 dispensers.

3. Assess a Business Fee Based on Hearing Instrument Sales Revenue.

Using the hearing instrument dispenser survey information related previously, the Department could calculate the surcharge rate per hearing instrument and in statute require each dispensing business to submit a fee based on total certified dispenser unit sales. Similar to approach number 2 above, mechanisms should assure that only certified dispenser activity is assessed. The Department could corroborate reports by requiring submission of annual business or individual tax returns. Following review of dispensing activity, the Department would notify each dispensing business of the annual fee due.

4. Support Consumer Protection with General Funding.

Another alternative to increasing current fees or establishing new fees to cover the costs for protecting consumers of hearing instruments is a general fund appropriation. This option would represent a policy change from both historical and current funding of occupational regulation. Current legislative policy, as previously noted and as articulated in Minnesota Statutes 2007, section 214.06, Subdivision 1, is that all costs of regulating an occupation be paid for by fees sufficient to cover anticipated expenditures. Justification for departing from this policy and utilizing general funds could rest on the particular vulnerability of the hearing aid consumer, the small size of the practitioner group, the extent to which regulatory resources are expended on un-certified dispensers and draw on the fee revenues of fee-paying certified dispensers, and that any imposition of higher fees would likely be passed to consumers in the cost of hearing aids and services. Reasons against use of general funds to protect hearing aid consumers from illegal dispensing conduct are that it would be precedent-setting and provide a basis for future requests to subsidize the regulatory costs of other occupations credentialed by the State.

D. Department of Health Recommendation.

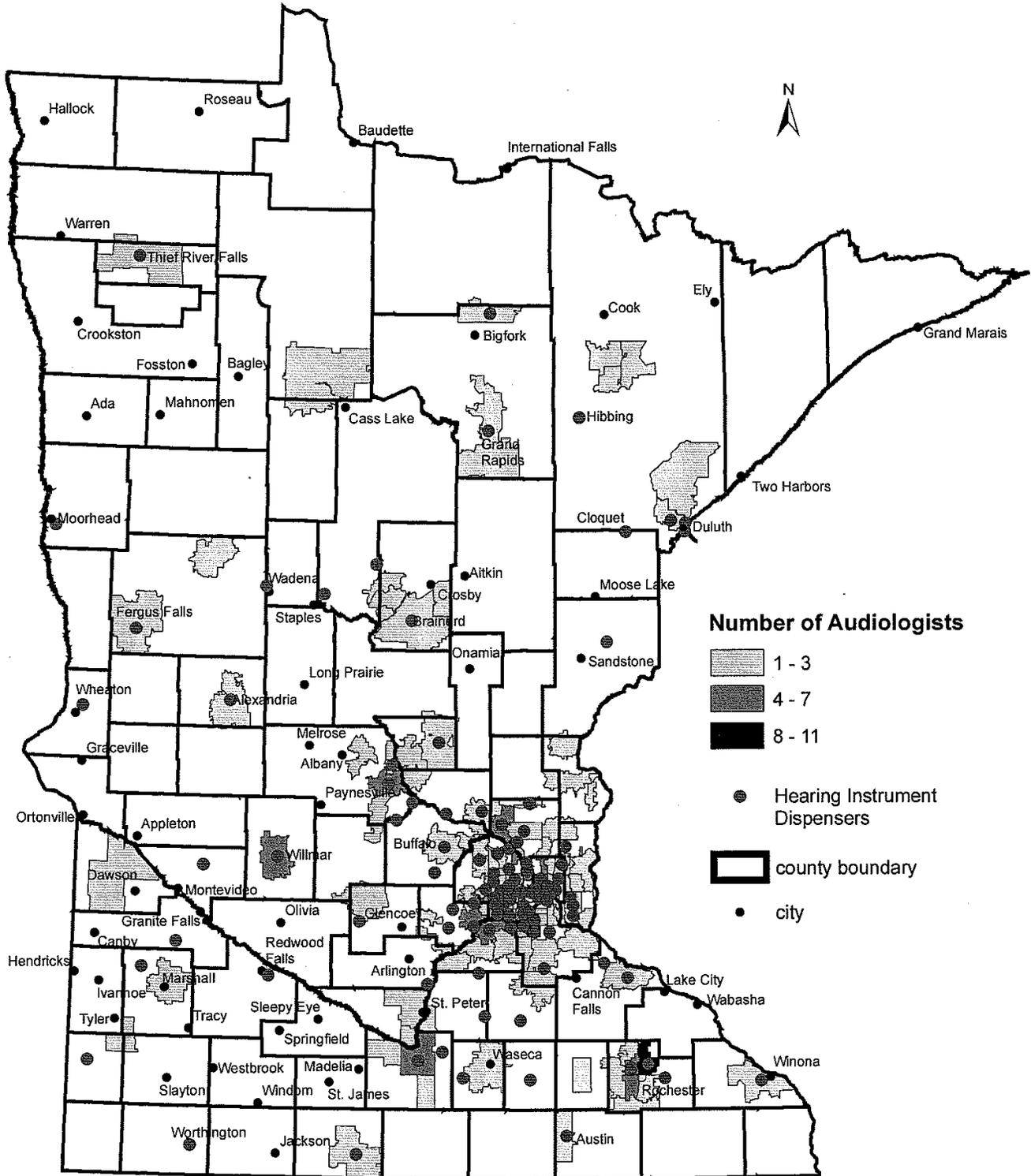
The Department recommends increasing the certification fee and the examination fee for hearing instrument dispensers so that total biennial revenues will approximate biennial expenditures. Under Minn. Stat. sec. 16A.1285, Subd. 2, the policy for specific charges for services related to licensure is to set the charges at a level that approximates costs involved in providing the services. As current fees under recover the regulatory cost for hearing instrument consumer protection services, it is appropriate to establish a fee that will recover the cost. In addition, a surcharge is recommended to recover the current deficit.

The fee for certification would increase from \$350 to \$700 per year, and the exam fee would increase from \$500 to \$1000. The surcharge would be \$550 per year for two years. Fee calculations assume a growth in the number of hearing instrument dispensers of five per year. This assumption was reduced from ten per year on advice of dispenser representatives who see industry changes adversely affecting the occupation. Lesser or greater numbers of new entrants to the occupation will affect the account balance. These fee increases are lower than initially estimated in 2007 due to assigning support staff to handle consumer information and assistance, and not filling a staff vacancy.

Changes to program operations have maintained effectiveness and reduced service costs. Staff levels have been reduced, but further reductions will compromise consumer protection. Current and future staffing for consumer protection, including investigation and credentialing activity, totals 1.45 FTEs. The amount of the current account deficit attributable to unrecovered costs incurred in FY2006 and FY2007 could be excluded from the surcharge fee calculation under legislative policy stated in Minn. Stat. sec. 16A.1285, subd. 2. However, limiting recovery to the two fiscal years immediately preceding the fee adjustment shifts recovery of the costs to other unrelated regulatory programs funded by the State Government Special Revenue Fund.

Appendix 1

Audiologists and Hearing Instrument Dispensers by ZIP Code - Minnesota 2007



Source: Health Occupations Program, March 2007

Appendix 2

Fiscal History of Hearing Instrument Dispenser Regulation

Fiscal Year	Expenses	Revenues	Annual Acct. Bal	Transfers (out)/in**	Cumulative Acct. Bal	No. of HIDs	Credential Fee Amnt	Notes
1988								
1989					(\$77,754)			Rulemaking for permitting of hearing instrument sellers
1990	\$38,592	\$37,849	(\$743)	\$0	(\$78,497)		\$140	
1991	\$96,056	\$56,656	(\$39,400)	\$0	(\$117,897)	380	\$140	
1992	\$78,100	\$66,812	(\$11,288)	\$0	(\$129,185)	400	\$140	
1993	\$103,921	\$84,001	(\$19,920)	\$0	(\$129,185)	440	\$140	
1994	\$183,437	\$126,952	(\$56,485)	\$0	(\$185,670)	344	\$340/\$239	*, Certification Exam required to dispense Exam Development, Contested case
1995	\$196,032	\$118,695	(\$77,337)	\$0	(\$263,007)	226	\$340/\$239	
1996	\$155,087	\$104,085	(\$51,002)	\$0	(\$313,000)	284	\$340/\$239	
1997	\$186,000	\$102,000	(\$84,000)	\$0	(\$397,000)	290	\$340/\$239	Contested case.
1998	\$143,000	\$191,000	\$48,000	\$0	(\$349,000)	299	\$820/\$330	Audiologist pay lower certification fee, and the fee differential is based on fewer complaints
1999	\$73,000	\$200,000	\$127,000	\$0	(\$222,000)	319	\$820/\$330	
2000	\$90,000	\$192,000	\$109,000	\$0	\$120,000	320	\$820/\$330	
2001	\$96,000	\$212,000	\$116,000	\$0	\$4,000	331	\$820/\$330	
2002	\$113,000	\$222,000	\$109,000	\$0	\$113,000	353	\$820/\$330	
2003	\$131,000	\$247,000	\$65,000	(\$51,000)	\$175,000	376	\$820/\$330	
2004	\$157,319	\$50,752	(\$106,567)	\$0	\$68,000	398	\$0	Credential fee holiday to reduce surplus
2005	\$158,381	\$176,357	\$17,976	\$9,000	\$95,000	404	\$350	Audiologists removed from certification requirement Examination challenges and contested case.
2006	\$201,553	\$104,896	(\$96,657)	\$0	(\$1,657)	172	\$350	
2007	\$190,260	\$96,370	(\$93,980)	\$24,000	(\$71,547)	184	\$350	
2008	\$146,226	\$88,374	\$57,852	\$0	\$129,399	195	\$350	

* Fee differential: Audiologists, also registered by MDH, were credited \$101 for their registration fees

** Transfer to General Fund in 2003; Transfer from Audiology account for exam administration costs in 2005 and for unallocated consumer information and assistance costs in 2007 for period 2005 through 2007.

Appendix 3

Materials Included in a Mailing Packet

Literature sent to consumers may include the following publications:

- *Legal rights and consumer information about purchasing a hearing instrument*, Minnesota Department of Health
- *Sound advice on hearing aids*, Federal Trade Commission
- *Straight talk from FDA about hearing loss and hearing aids*, U.S. Food and Drug Administration
- *Buying medical devices online*, Center for Devices and Radiological Health, U.S. Food and Drug Administration
- *Services to Minnesotans who are deaf, deafblind or hard of hearing*, Minnesota Department of Human Services, Deaf and Hard of Hearing Services Division (DHHS)
- *DHHS Hearing Aid Information Series*, Minnesota Department of Human Services
 - *Hearing and hearing loss*
 - *Myths about hearing aids*
 - *Buying a hearing aid*
 - *Types of hearing aids*
 - *Getting used to hearing aids*
 - *Care & troubleshooting of hearing aids*
 - *Assistive listening devices and hearing aids*
 - *Consumer rights and laws*
 - *Financial resources for hearing aids*
- *A User's Guide to Small claims Court*, Office of the Minnesota Attorney General

Appendix 4

Types and Numbers of Requests from Consumers

The following table shows numbers of intakes received by the Health Occupations Program from FY 2006 through 2007. The numbers reflect requests for information received telephonically or in written correspondence. This table does not include complaint data.

Intakes Received – Consumer Information & Assistance and Practitioner Questions	FY 06	FY 07	FY 08
Inquiry – Credential Check	5	15	19
Inquiry – Exam Questions	N/A	N/A	142
Inquiry – Public Action Check	1	4	3
Total Information Inquiries / Type	40	46	163
Information about purchasing a hearing aid, requests for literature (may include credential check)	20	9	14
Questions related to consumer’s purchase of instruments (terms of purchase agreement, trial period, cancellation fee, refunds, adjustments during trial, Mn/Care)	7	6	13
Questions related to advertising (mail order, internet, advertised sales, discounts and open houses)	4	7	5
Questions related to problems with refunds, service, and contacting dispenser due to business closure		2	5
Questions related to home solicitation sales	1	3	1
Request for financial resources	6	1	2
Questions related to post-trial period, including practitioner competency, hearing aids not working, excessive adjustments/repairs, improper fit, or medical	2	5	4
Certified dispenser questions to I/E staff about laws and regulations, purchase agreements and to request copies of MDH brochure	N/A	11	23
Certified dispenser questions to Credentialing staff about applications, renewal, continuing education	N/A	N/A	53
Questions to Credentialing staff about exam, obtaining certification, and requests for applications	N/A	2	43

The following table shows the types of callers as related to table above for Intakes Received.

Type of Caller	FY 06	FY 07	FY 08
Consumer	29	21	24
Consumer relative/friend	10	10	11
Other Professional/Agency, including dispensers	8	13	10
Total	47	44	45

The following table shows the number of calls received through intake, by month and by year for calendar year 2005, 2006 and 2007. The table includes calls related to allegations,

credential check, consumer information, public information and practitioner information. In July 2007, questions received through the Credentialing staff related to examinations were added to the intake database.

January 1, 2005 through December 31, 2007	2005	2006	2007 Investigation & Enforcement (Consumer & Dispenser)	2007 Credentialing (Application & Exam)
January	6	5	11	0
February	4	9	7	0
March	2	5	6	0
April	6	11	9	0
May	9	7	9	0
June	8	7	16	0
July	1	9	27	13
August	14	20	17	12
September	6	45	32	21
October	5	28	18	136
November	13	12	10	11
December	7	13	9	12

Electronic Call Processing (ECP)

In April, 2007, the Department implemented ECP for the toll free number (1-800-657-3837) and the general information number (651-297-3729) for hearing instrument consumers. These phone numbers are published on the Department's brochures for consumer who purchase hearing instruments or use the services of hearing instrument dispensers, speech-language pathologists, audiologists, and occupational therapists. However, the majority of phone calls placed to these numbers are related to hearing instrument dispensing services. The ECP system gives callers the choice of speaking to staff, leaving their name and address for a complaint form or brochures, and also provides the Health Occupations Program website, fax number and mailing address. Additionally, the ECP gives callers the office hours and instructions for using the Department's website. The following table reflects calls made to the Hearing Instrument Dispenser Consumer Information Toll Free number 800-657-3837 and 651-297-3729 for the period May 2007 through August 2007.

	May 2007		June 2007		July 2007		Aug 2007	
	Number of Times Box Accessed	Incoming Connect Minutes	Number of Times Box Accessed	Incoming Connect Minutes	Number of Times Box Accessed	Incoming Connect Minutes	Number of Times Box Accessed	Incoming Connect Minutes
Transfer to Main Greeting	36	0	15	3	12	2	51	49
Main Greeting	37	30	65	59	45	50	0	0
Website Address	2	2	1	1	0	0	23	10
Complaint Form/ Brochure	33	15	35	25	18	8	54	1
Transfer to Intake Staff	10	3	62	0	44	0	17	5

Appendix 5

Consumer Rights Brochure

Consumer information

Shop, compare. Hearing instrument quality, prices, models, guarantees, warranties, and service agreements vary widely. *Many practitioners offer terms that exceed the minimum legal requirements on trial periods, cancellations, refunds and warranties.*

Choosing your practitioner. You can purchase hearing instruments from the regulated practitioner of your choice. You do not have to buy a hearing instrument from the person who evaluated or tested your hearing.

"One 'brand' does not fit all." Ask if the practitioner offers multiple brands of hearing instruments.

Negotiate terms. You and your audiologist or hearing instrument dispenser should discuss and agree on all the features and the service agreement of the hearing instrument you buy. You have the right to ask the practitioner to put into writing any verbal promises or claims that are made to you about the hearing instrument sale, service contracts, guarantees, warranties, optional features, or battery agreements. You can ask for changes in any pre-printed contract form.

Insurance. Check with your insurance carrier to determine if they require a medical evaluation prior to paying for hearing testing and hearing aid fitting.

Locking. Some brand-name hearing instruments may be "locked." Ask if the hearing instruments can be programmed, adjusted and repaired by other practitioners.

Follow-up service is critical to the long-term success of the hearing instrument fitting. Before signing a contract you should ask for written information about the practitioner's service policy. After purchasing, if you do not understand any part of your hearing instrument sale, call your hearing instrument practitioner for an explanation. Work with your practitioner if you are experiencing any difficulty with either the fit or the sound quality of the hearing instrument.

Successful hearing aid usage requires an adjustment period. During the trial period, make sure to use your hearing instruments in many different situations, such as while in restaurants, group discussions, work related areas, attending sporting events, theaters, and while using telephones, watching TV, etc.

Make sure you resolve problems during the 45-day trial period. The practitioner should schedule service check-up appointments during the 45-day trial period to assure your satisfaction. If a checkup is not possible within the 45-day trial period, or if problems exist with your fitting, you should request an extension of the 45-days in writing. You should return the hearing instrument right away within this 45-day period if the dispenser does not provide adequate service or address fitting problems to your satisfaction.

Earwax and moisture can damage the hearing instrument. Be sure to follow your practitioner's instructions and those of the hearing instrument manufacturer to keep the hearing instrument: (1) clean and free of wax and [continued on next page]

(2) dry, especially when the weather is damp or perspiration is present. The hearing instrument will not work right if it is dirty or too damp.

Telecoils and T-switches are available on many hearing instrument models and can improve use with the telephone and other assistive listening devices. The practitioner should explain these options to you before you select a hearing instrument.

Directional technology improves hearing ability in noisy environments. Directional microphones help by providing more amplification to sounds that come from the front rather than sounds coming from behind you.

Used hearing instruments. Generally, you should not purchase a used hearing instrument.

Your old hearing instrument. If it still functions and fits your ear, you may want to keep it as a backup if your new instrument needs servicing or repair.

Questions or complaints

If you have questions or complaints regarding your practitioner, the hearing instrument or the service you have received, you may contact our Consumer Information Center at:

Minnesota Department of Health
Health Occupations Program
85 E 7th Place, Suite 300
P.O. Box 64882
St. Paul, MN 55164-0882

Phone: (651) 201-3729
MN Relay: 711
TDD/TYY: (651) 201-5797
Toll Free: (800) 657-3837
Web site: www.health.state.mn.us
E-mail: HOP@health.state.mn.us

Legal rights and consumer information about purchasing a hearing instrument

General and legal information about the purchase of hearing instruments in Minnesota



*Protecting, maintaining and improving
the health of all Minnesotans*

Who is authorized to dispense hearing instruments?

There are two types of practitioners regulated in Minnesota and authorized to dispense hearing instruments who may help you with a hearing loss. Their qualifications are:

Audiologists are persons licensed by the Commissioner of Health who: (1) have completed at least a Master's degree and a supervised professional internship experience in audiology; (2) provide diagnostic hearing evaluations; (3) specialize in the evaluation and rehabilitation of individuals with hearing loss; and (4) recommend, fit and/or dispense hearing instruments.

Hearing Instrument Dispensers are persons certified by the Commissioner of Health who: (1) have passed a written and practical examination, (2) provide hearing testing and evaluations for the purpose of hearing aid recommendation, selection and fitting; and (3) recommend, select and fit hearing instruments.

Minimum legal requirements

Medical evaluation. The Food and Drug Administration requires that you have a medical evaluation by a licensed physician (preferably a physician who specializes in diseases of the ear) before purchasing a hearing aid.

Ear, nose and throat specialists (ENT's or Otolaryngologists) are licensed physicians who specialize in identifying and treating medical conditions related to diseases of the ear and the hearing system.

Medical evaluation waiver. You can obtain a hearing instrument without having a medical evaluation by a licensed physician, if:

(1) You are 18 years of age or older; (2) The practitioner informs you that waiving the medical evaluation by a licensed physician is not in your best health interest; (3) The practitioner does not in any way actively encourage you to waive the medical evaluation; and (4) The practitioner gives you an opportunity to review and sign a waiver form before you sign the contract. You can ask the practitioner for a copy of the medical waiver form.

Minors. Minnesota law prohibits practitioners from dispensing a hearing instrument to a minor person 18 years or younger, unless evaluated by an audiologist for hearing evaluation and hearing aid evaluation.

Audiograms. You have the right to obtain a copy of the audiogram from the practitioner who tested your hearing.

Cancellations. The practitioner must give you a written 45-day trial that allows you to return the hearing instrument within 45 calendar days after delivery for any reason. You must cancel the sale in writing and return the instrument to the dispenser within this 45-day period. If the hearing instrument is in the possession of the practitioner for any reason during those 45 calendar days after delivery, then the 45-day trial period is extended one day for each 24-hour period the instrument is not in your possession.

Trade-ins. Upon cancellation of your purchase agreement and at your request, the practitioner must return your hearing instrument used as a trade-in or for a discount in the price of a new hearing instrument.

Refunds. The practitioner may keep up to \$250 of the total purchase price of the hearing instruments as a cancellation fee if you agree to it. You should look for the refund amount on the contract. The practitioner has 30 days to refund your money.

Repair warranties. Any warranty of hearing instrument repairs must be made in writing and delivered to you. The warranty must state the service provider's name, address, telephone number, length of warranty, model and serial number of the hearing instrument covered by warranty and all other terms and conditions of the warranty.

Purchases made in the home. At the time of the sale, the practitioner must tell you of your right to cancel a home solicitation sale. Like any other "in-home" sale, you have the right to cancel the sale of a hearing instrument **until midnight of the third business day after the sale occurs.** If you choose to cancel the sale, you must give a written cancellation to the practitioner at his or her address as stated in the contract. If you mail the cancellation before the three-day refund period is over, it is effective upon deposit in a mailbox. In this instance, the practitioner has **ten** calendar days to refund 100% of your money.

Canceling an in-home purchase. The practitioner must give you a copy of the contract that must include, near the signature line, a notice of your right to cancel the contract. The practitioner must attach to the contract or receipt a fully completed form captioned, "**NOTICE OF CANCELLATION.**" If the practitioner does not give you this form, you can cancel the in-home sale by notifying the practitioner in any manner and by any means of the intention to cancel.

User instructional booklet. The practitioner must give you this booklet for any hearing instrument you select. The practitioner must review the content of the booklet with you.

Instrument identification. All hearing instruments must be clearly and permanently marked with the name of the manufacturer or distributor, model name or number, serial number, and the year of manufacture.

Used or rebuilt instruments. If a hearing instrument has been used, or if it is a rebuilt model, it must state the fact on the container in which it is packaged and also on a tag that is physically attached to the instrument.

Reprinted By:

Revised: 8/14/2006

Appendix 6

Hearing Instrument Dispenser Consumer Information on MDH Website

HID Consumer Information

Page 1 of 2



Health Occupations Program

- [Home](#)
- [General Information](#)
- [Hearing Instrument Dispensers Certification](#)
- [Occupational Therapy Practitioner Licensing](#)
- [Speech Language Pathologists and Audiologists Licensing](#)
- [Office of Unlicensed Complementary and Alternative Health Care Practice](#)
- [Doula Registry](#)

Health Occupations Program

Hearing Instrument Dispenser Certification Program

Consumer Information

- <http://www.fda.gov/cdrh/consumer/> Medical Devices Consumer Information, Federal Food and Drug Administration.
- <http://www.ftc.gov/ftc/consumer.htm> Consumer Information about internet sales at Federal Trade Commissioner.
- http://www.dhs.state.mn.us/main/groups/disabilities/documents/pub/dhs_id_000081.hcsp Minnesota Department of Human Services Deaf and Hard of Hearing Services
- <http://www.health.state.mn.us/divs/fh/mch/hlth-vis/index.html>, Minnesota Department of Health, Hearing and Vision Screening Information
- <http://www.mncdhh.com/> Minnesota Commission Serving Deaf and Hard of Hearing People
- <http://www.mncourts.gov/selfhelp/?page=313> Minnesota Conciliation Court Information
- <http://www.mnd.bbb.org/search.html>, Minnesota Better Business Bureau
- <http://www.health.state.mn.us/divs/hpsc/hop/hid/hidbro081406.pdf> Legal Rights and Consumer Information about Purchasing a Hearing Instrument - MDH/HOP Informational Brochure (pdf:37kb:2 pages)

For further information, please contact the Minnesota Department of Health's Division of Compliance Monitoring, Health Occupations Program at 651-201-3724, or by e-mail at hop@health.state.mn.us.

<http://www.health.state.mn.us/divs/hpsc/hon/hid/consumerinfo.html>

08/31/2007

Appendix 7

Hearing Instrument Dispenser Exam Data for Fiscal Years 2006 and 2007

Hearing Instrument Dispenser Certification Examinations Overall Passing Rates FY'06 and FY'07*

	<u>FY06</u>	<u>FY07</u>	<u>Total</u>
Written Test Applicants	35	38	73
Written Passing	<u>23</u>	<u>32</u>	<u>55</u>
Percent Pass Rate	66%	84%	75%
Practical Test Applicants	52	65	117
Practical Passing	<u>11</u>	<u>21</u>	<u>32</u>
Percent Pass Rate	21%	32%	27%
Total Applicants	87	103	190
Total Passing	<u>34</u>	<u>53</u>	<u>87</u>
Total Pass Rate	39%	51%	46%

* Figures do not include results of persons with audiology training.

Hearing Instrument Dispenser Certification Examination Passing Rates for 8 Exams in FY'06 and FY'07*

N = 190	73 Written	117 Practical
<u>Exam Date</u>	<u>Pass %</u>	<u>Pass %</u>
7/14/2005	38%	15%
11/8/2005	57%	20%
2/16/2006	75%	15%
5/4/2006	88%	31%
8/3/2006	89%	31%
11/2/2006	80%	50%
2/22/2007	78%	27%
5/3/2007	90%	19%

Breakdown of Practical Exam Failures in FY'06 and FY'07*

N=85	Practical Portions: % Failing		
<u>Exam Date</u>	<u>Ear Mold</u>	<u>Audiometry</u>	<u>Fitting</u>
7/14/2005	100%	100%	44%
11/8/2005	43%	100%	40%
2/16/2006	33%	100%	0%
5/4/2006	0%	100%	20%
8/3/2006	38%	91%	14%
11/2/2006	50%	100%	33%
2/22/2007	13%	100%	25%
5/3/2007	20%	85%	50%

82 or 96% of the failures were Audiometry Failures

Appendix 8

Hearing Instrument Dispensing Fee Adjustment Worksheet

HEALTH OCCUPATIONS PROGRAM HEARING INSTRUMENT DISPENSER CERTIFICATION SYSTEM

Projected Budget with Annual Renewals, Exam Costs and Revenues, Combined Certification and Examination Fees

EXPENDITURES:	Fiscal Year:	Estimated/Projected Expenditures for Certification System									
		FY2004*	FY2005*	FY2006*	FY2007*	FY2008*	FY2009	FY2010	FY2011	FY2012	FY2013
Salaries/Fringe		\$120,902	\$114,896	\$154,138	\$145,932	\$111,625	\$119,915	\$119,915	\$119,915	\$119,915	\$119,915
Repairs		\$0	\$0	\$0	\$0	\$110	\$250	\$250	\$250	\$250	\$250
Printing/Duplication		\$1,718	\$1,522	\$1,507	\$1,980	\$1,530	\$2,000	\$1,500	\$1,500	\$1,500	\$1,500
Professional Services		\$4,167	\$3,468	\$2,559	\$3,223	\$2,101	\$3,500	\$3,500	\$3,500	\$3,500	\$3,500
Enforcement Activities		\$0	\$0	\$919	\$49	\$0	\$2,500	\$2,500	\$2,500	\$2,500	\$2,500
Advisory Cncl Expenses		\$1,155	\$1,650	\$1,430	\$1,487	\$1,265	\$2,000	\$2,000	\$2,000	\$2,000	\$2,000
Communicatns Pstg/Phones		\$1,637	\$1,549	\$561	\$252	\$158	\$1,000	\$600	\$600	\$600	\$600
Travel		\$678	\$1,062	\$1,555	\$1,423	\$681	\$2,000	\$1,500	\$1,500	\$1,500	\$1,500
Training		\$165	\$0	\$0	\$0	\$89	\$250	\$250	\$250	\$250	\$250
Publications/Memberships		\$0	\$0	\$330	\$100	\$0	\$100	\$100	\$100	\$100	\$100
Supplies		\$839	\$679	\$390	\$497	\$345	\$900	\$650	\$650	\$650	\$650
Attorney General Costs		\$2,256	\$4,300	\$5,475	\$51	\$0	\$5,000	\$5,000	\$5,000	\$5,000	\$5,000
Computer Services & Equipment		\$0	\$3,036	\$0	\$4,115	\$2,051	\$2,000	\$6,000	\$2,000	\$2,000	\$6,000
TOTAL EXPENDITURES		\$133,517	\$132,162	\$168,864	\$159,109	\$119,955	\$141,415	\$143,765	\$139,765	\$139,765	\$143,765
Salary Increases (3.25% starting '10)		\$0	\$0	\$0	\$0	\$0	\$0	\$3,897	\$4,024	\$4,155	\$4,290
Direct Cost		\$131,261	\$127,862	\$163,389	\$159,109	\$119,955	\$141,415	\$143,765	\$139,765	\$139,765	\$143,765
Indirect Cost (23.9% starting '09)		\$23,802	\$26,219	\$32,689	\$31,151	\$26,271	\$33,798	\$34,360	\$33,404	\$33,404	\$34,360
TOTAL COST		\$157,319	\$158,381	\$201,553	\$190,260	\$146,226	\$175,213	\$182,022	\$177,193	\$177,324	\$182,415

REVENUES:	Fiscal Year:	Estimated/Projected Receipts for Certification System									
		FY2004*	FY2005*	FY2006*	FY2007*	FY2008*	FY2009	FY2010	FY2011	FY2012	FY2012
HID's Certified**		164	168	159	178	182	185	190	195	200	205
Aud's Certified		230	236	13	6	5	3	3	3	3	3
Trainees		35	25	20	19	9	15	15	15	15	15
Certification Fee		\$350	\$350	\$350	\$350	\$350	\$350	\$350	\$350	\$350	\$350
Exam Fees		\$405	\$405	\$405	\$405	\$405	\$405	\$405	\$405	\$405	\$405
Trainee Fees		\$200	\$200	\$200	\$200	\$200	\$200	\$200	\$200	\$200	\$200
Late Fee		\$200	\$200	\$200	\$200	\$200	\$200	\$200	\$200	\$200	\$200
Verification Fees		\$25	\$25	\$25	\$25	\$25	\$25	\$25	\$25	\$25	\$25
Estimated Fee Receipts:											
Certification Application Fees *		\$0	\$143,179	\$62,116	\$64,845	\$66,832	\$64,750	\$66,500	\$68,250	\$70,000	\$71,750
Initial Application Fees		\$10,144	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Trainee Fees		\$7,000	\$5,000	\$4,000	\$3,800	\$3,200	\$3,000	\$3,000	\$3,000	\$3,000	\$3,000
Exam Fees		\$25,000	\$23,988	\$20,640	\$24,485	\$13,365	\$12,150	\$12,150	\$12,150	\$12,150	\$12,150
Verification Fees		\$1,355	\$990	\$750	\$150	\$175	\$100	\$100	\$100	\$100	\$100
Late Fees		\$2,000	\$3,000	\$2,000	\$1,600	\$1,400	\$1,000	\$1,000	\$1,000	\$1,000	\$1,000
Penalties		\$5,253	\$200	\$15,390	\$1,490	\$3,402	\$5,000	\$5,000	\$5,000	\$5,000	\$5,000
TOTAL FEE RECEIPTS		\$50,752	\$176,357	\$104,896	\$96,370	\$88,374	\$86,000	\$87,750	\$89,500	\$91,250	\$93,000

* Fee Holiday FY'04; Actual Expenditures & Receipts

**FY2008-12 figures include certified audiologists

BALANCE: Revenues - costs	-\$106,567	\$17,976	-\$96,657	-\$93,890	-\$57,852	-\$89,213	-\$94,272	-\$87,693	-\$86,074	-\$89,415
BALANCE CARRYFORWARD	\$175,000	\$68,433	\$95,000	-\$1,657	-\$71,547	-\$129,399	-\$218,612	-\$312,884	-\$400,577	-\$486,650
EARNINGS TRANSFERRED IN**	\$0	\$9,000	\$0	\$24,000	\$0	\$0	\$0	\$0	\$0	\$0
ACCUMULATED ENDING BALANCE	\$68,433	\$95,409	-\$1,657	-\$71,547	-\$129,399	-\$218,612	-\$312,884	-\$400,577	-\$486,650	-\$576,065

**From Audiology account for exam and consumer information & assistance costs not previously allocated.

Proposed Fee Adjustments: Additional Receipts

If Annual Certification Fee = \$700 ***							\$66,500	\$68,250	\$70,000	\$71,750
If Surcharge of \$550 for 2 years							\$104,500	\$107,250	\$0	\$0
If Exam Fee = \$500 / exam ***							\$33,100	\$33,100	\$33,100	\$33,100
Total Additional Fees							\$204,100	\$208,600	\$103,100	\$104,850
ADJUSTED BALANCE: Revenues - costs							\$109,828	\$120,907	\$17,026	\$15,435
BALANCE CARRYFORWARD							-\$218,612	-\$108,784	\$12,123	\$29,150
ACCUMULATED ENDING BALANCE							-\$108,784	\$12,123	\$29,150	\$44,585

***100% Certification Fee & 100% Exam Fee Increases

HEALTH OCCUPATIONS PROGRAM
HEARING INSTRUMENT DISPENSER CERTIFICATION SYSTEM
Certification & Exam Staffing & Salary Schedule*

<u>PERSONNEL</u>	<u>FY2004**</u>	<u>FY2005**</u>	<u>FY2006**</u>	<u>FY2007**</u>	<u>FY2008**</u>	<u>FY2009</u>	<u>FY2010</u>	<u>FY2011</u>	<u>FY2012</u>	<u>FY2013</u>
Health Prgrm Mgr. (Hiendlmayr)	\$0 10%	\$0 15%	\$0 15%	\$0 15%	\$0 10%	\$0 10%	\$0 10%	\$0 10%	\$0 10%	\$0 10%
Clerk Typist 4, Supervisor (Ditschler/Vacant)	\$0 2%	\$0 5%	\$0 1%	\$0 1%	\$0 0%	\$0 0%	\$0 0%	\$0 0%	\$0 0%	\$0 0%
State Prog. Admin Dir. (Winkelmann/Vacant)	\$0 10%	\$0 20%	\$0 25%	\$0 25%	\$0 20%	\$0 0%	\$0 0%	\$0 0%	\$0 0%	\$0 0%
Health Care Prog. Invstgtr (Lloyd)	\$0 35%	\$0 20%	\$0 75%	\$0 75%	\$0 65%	\$0 50%	\$0 50%	\$0 50%	\$0 50%	\$0 50%
Office & Admin. Spec. Int. (Miller)	\$0 30%	\$0 5%	\$0 30%	\$0 30%	\$0 20%	\$0 20%	\$0 20%	\$0 20%	\$0 20%	\$0 20%
Office & Admin. Spec. Sr. (Rauchwarter)	\$0 20%	\$0 25%	\$0 0%	\$0 0%	\$0 1%	\$0 35%	\$0 35%	\$0 35%	\$0 35%	\$0 35%
State Program Administrator (Fuller)	\$0 80%	\$0 80%	\$0 50%	\$0 50%	\$0 50%	\$0 50%	\$0 50%	\$0 50%	\$0 50%	\$0 50%
Legal Analyst (Renell)	\$0 20%	\$0 5%	\$0 25%	\$0 25%	\$0 15%	\$0 15%	\$0 15%	\$0 15%	\$0 15%	\$0 15%
Student Wrkr Paraprofessional, Sr. (Vacant)	\$0 0%	\$0 0%	\$0 0%	\$0 0%	\$0 0%	\$0 0%	\$0 0%	\$0 0%	\$0 0%	\$0 0%
Total FTE's	2.07	1.75	2.21	2.21	1.81	1.80	1.80	1.80	1.80	1.80
Total HOP Salary+Benefit Cost	\$120,902	\$114,896	\$154,138	\$145,932	\$111,625	\$119,915	\$119,915	\$119,915	\$119,915	\$119,915

* SFY'09 Salary Projections

**Actual Total Cost

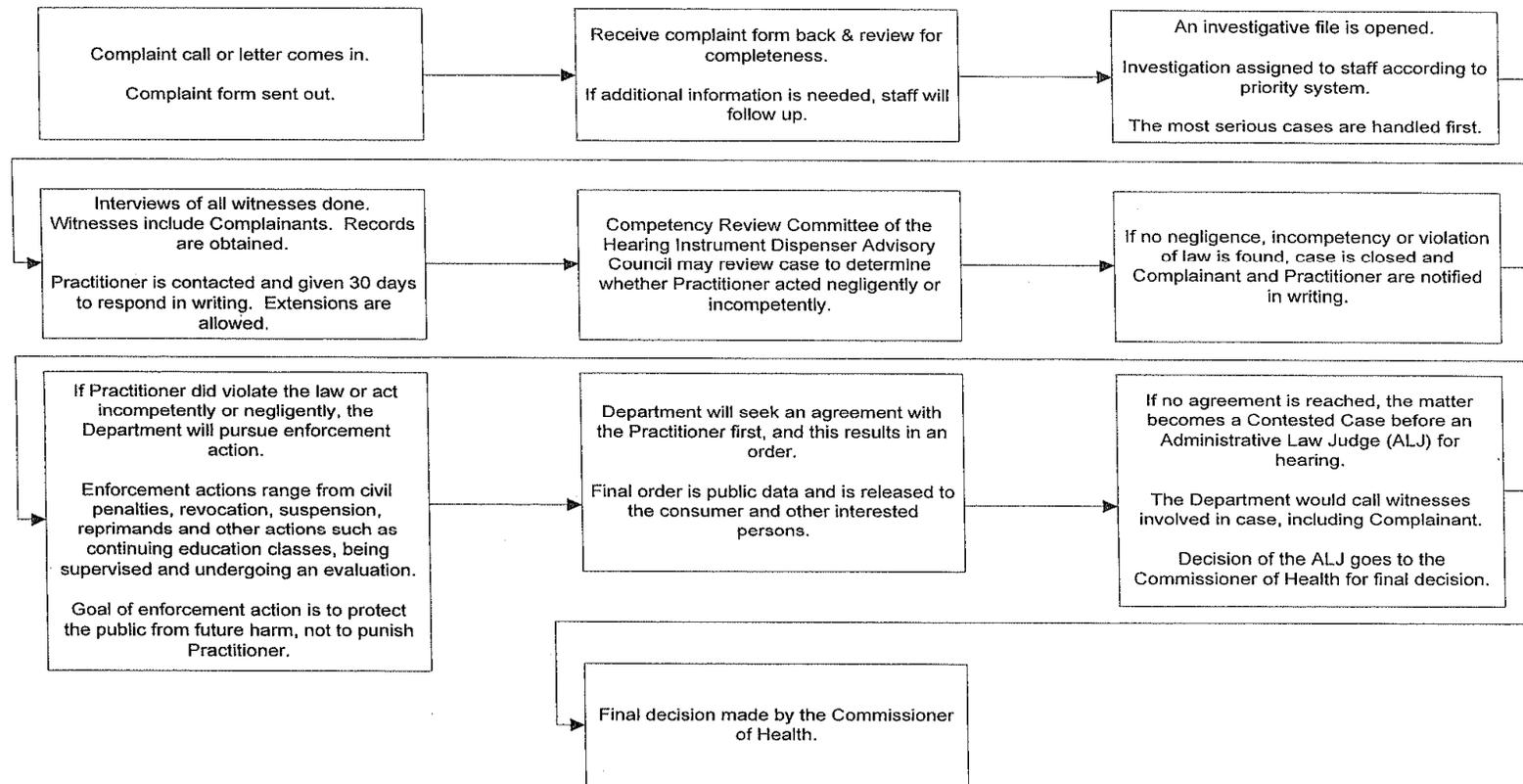
Appendix 9

Complaint Investigation Process

Complaint Investigation Process
Health Occupations Program, Minnesota Department of Health

The Department of Health has the authority to investigate allegations of wrongdoing by practitioners and to protect the public. The Department protects the public by imposing sanctions against practitioners to ensure compliance with the law in the future. The Department conducts the investigation in a neutral and unbiased way and does not represent the consumer, or the practitioner. If consumers seek refunds, they should consider private remedies, including conciliation court to obtain refunds.

During the investigation, information obtained is confidential and the file cannot be disclosed to anyone, including the Complainant and Practitioner.



Appendix 10

Allegations Received and Investigations Opened

	FY 2005	FY 2006	FY 2007	FY 2008
Intakes Received - Allegations	41	44	44	45
Investigations Opened – Allegation	20	16	23	16
Type of Allegation:				
False or misleading advertising, high pressure sales, deception or fraud		2	3	6
Failure to follow hearing testing protocol, FTC or FDA regulations, including issues related to health records & documentation		3	5	4
Conduct likely to deceive, defraud or harm public including incompetence or negligence	7	4	7	2
Failed to provide timely refund, including incorrect contract language product and repair	14	10	6	6
Illegal practice, continuing education, application issues	3	4	6	2
Total Investigations Closed:	6	13	19	23
Closed – dismissed with advisement	1	1	4	9
Closed – insufficient evidence to show violation	3	4	10	10
Uncooperative witness/client	1			2
No jurisdiction	1			
Referred for enforcement		5	4	2
Enforcement Action Opened	0	2	5	2
Enforcement Action Closed	0	1	2*	1
Type of Enforcement Action:				
Civil Penalty		1		1
Censure/Reprimand				1

* These enforcement actions were closed without a sanction imposed.

Type of Caller	FY 2005	FY 2006	FY 2007	FY 2008
Consumer	24	26	21	24
Consumer relative/friend	7	10	10	11
Other professional or agency, including certified dispensers and audiologists	10	8	13	10
Total	41	44	44	45