

§17305. Hearing aid dealing and fitting practice standards

For the purpose of this section, "dealer-licensee" means an individual licensed under this chapter as a hearing aid dealer and fitter or audiologist who engages in the practice of dealing in and fitting of hearing aids as defined under section 17101, subsection 10. [PL 2007, c. 369, Pt. C, §3 (NEW); PL 2007, c. 369, Pt. C, §5 (AFF).]

1. Payment; trial period. The dealer-licensee may require the purchaser to pay the full purchase price for the hearing aid or aids at the time of delivery.

A. On the date of delivery, a 30-day trial period begins. If within this trial period the purchaser notifies the dealer-licensee of the purchaser's wish to cancel the transaction, the dealer-licensee shall make a full refund of the purchase price, less the reasonable price of the ear mold or molds and lab fees, at the time the purchaser returns the hearing aid or aids. The dealer-licensee shall also return to the purchaser any hearing aids, devices, accessories and ear molds that the dealer-licensee has received from the purchaser. The dealer-licensee shall contact the purchaser and provide any service, fitting or repair that may be necessary for the beneficial and comfortable use of the hearing aid. [PL 2007, c. 369, Pt. C, §3 (NEW); PL 2007, c. 369, Pt. C, §5 (AFF).]
[PL 2007, c. 369, Pt. C, §3 (NEW); PL 2007, c. 369, Pt. C, §5 (AFF).]

2. Return for medical reasons. The purchaser may cancel the transaction by submitting to the dealer-licensee within 60 calendar days from the date of delivery of the hearing aid or aids a written opinion from a physician or audiologist stating that the hearing aid or aids are not advisable for the purchaser. Upon receipt of the statement and return by the purchaser of the hearing aid or aids, the dealer-licensee shall make a full refund of the purchase price, less the reasonable price of the ear mold or molds and lab fees. The dealer-licensee shall also return to the purchaser any hearing aids, devices, accessories and ear molds that the dealer-licensee has received from the purchaser.
[PL 2007, c. 369, Pt. C, §3 (NEW); PL 2007, c. 369, Pt. C, §5 (AFF).]

3. Violations. A provision of a contract that limits or conditions in any way the rights guaranteed to purchasers by this section is against public policy and void. A violation of the requirements of this section, in addition to being unethical conduct under section 17307, constitutes a violation of the Maine Unfair Trade Practices Act.
[PL 2007, c. 369, Pt. C, §3 (NEW); PL 2007, c. 369, Pt. C, §5 (AFF).]

4. Dealer records. Each dealer-licensee shall keep records for at least 6 years on each person who purchases a hearing aid to include:

A. Results of measurement of known hearing; [PL 2007, c. 369, Pt. C, §3 (NEW); PL 2007, c. 369, Pt. C, §5 (AFF).]

B. Medical clearance for a hearing aid when indicated under this section or purchaser's waiver of need for medical clearance; [PL 2007, c. 369, Pt. C, §3 (NEW); PL 2007, c. 369, Pt. C, §5 (AFF).]

C. A copy of the warranty; [PL 2007, c. 369, Pt. C, §3 (NEW); PL 2007, c. 369, Pt. C, §5 (AFF).]

D. Date and type of hearing aid sold to purchaser; [PL 2007, c. 369, Pt. C, §3 (NEW); PL 2007, c. 369, Pt. C, §5 (AFF).]

E. Date and type of replacement hearing aids; and [PL 2007, c. 369, Pt. C, §3 (NEW); PL 2007, c. 369, Pt. C, §5 (AFF).]

F. Type of ear mold and other pertinent information such as reports from speech and hearing centers. [PL 2007, c. 369, Pt. C, §3 (NEW); PL 2007, c. 369, Pt. C, §5 (AFF).]
[PL 2007, c. 369, Pt. C, §3 (NEW); PL 2007, c. 369, Pt. C, §5 (AFF).]

5. Calibration. Each audiometer used in the measurement of hearing when testing and fitting a hearing aid must meet calibration standards as defined in the board's rules. Dealer-licensees shall obtain an objective calibration check on permanently installed and portable audiometers at least once a year. If an objective calibration check shows an audiometer to deviate more than 10 decibels from the calibration standard, the audiometer must be recalibrated by either a calibration laboratory or the audiometer manufacturer before it may be used to test hearing. Date of the last calibration check or recalibration must be prominently displayed on the audiometer.

[PL 2007, c. 369, Pt. C, §3 (NEW); PL 2007, c. 369, Pt. C, §5 (AFF).]

6. Purchase agreement. A dealer-licensee who practices the fitting of and dealing in or sale of hearing aids shall deliver to each person supplied with a hearing aid a written notice prior to or at the time the hearing aid is purchased. The notice must include all of the provisions prescribed in this section. The board shall prepare a model notice containing all the requirements of this section and shall furnish copies upon request.

A. The notice must include the dealer-licensee's signature, address of place of business and license number. [PL 2007, c. 369, Pt. C, §3 (NEW); PL 2007, c. 369, Pt. C, §5 (AFF).]

B. The notice must include the mailing address of the board. [PL 2007, c. 369, Pt. C, §3 (NEW); PL 2007, c. 369, Pt. C, §5 (AFF).]

C. The notice must include specifications as to the make and model of the hearing aid furnished, including:

(1) The brand name or manufacturer's name and the model;

(2) The serial number, notification of which must be given in writing later if not known at the time of the notice; and

(3) The condition of the hearing aid, whether new, used or reconditioned. [PL 2007, c. 369, Pt. C, §3 (NEW); PL 2007, c. 369, Pt. C, §5 (AFF).]

D. The notice must include the full terms of sale, including the following terms.

(1) There must be a full and complete disclosure of the cost of financing the purchase of the hearing aid.

(2) The notice must include the complete terms of service, including cost of service, what services are available, by whom and for how long the service is provided, including house or office calls, when applicable, and the terms of aftercare fitting.

(3) If the initial price of the hearing aid furnished is reduced by trade-in allowance or discount, the notice must conspicuously include the initial price of the hearing aid before trade-in allowance or discount, the amount of the trade-in allowance or discount and the final price to the consumer.

(4) The notice must include the provisions of the 30-day trial period and 60-day medical return period as set out under this section. [PL 2007, c. 369, Pt. C, §3 (NEW); PL 2007, c. 369, Pt. C, §5 (AFF).]

E. The notice must include the date of the sale. [PL 2007, c. 369, Pt. C, §3 (NEW); PL 2007, c. 369, Pt. C, §5 (AFF).]

F. The notice must include the terms of guarantee or warranty, including:

(1) The characteristics or properties of the hearing aid or parts of the hearing aid covered by or excluded from the guarantee or warranty;

(2) The duration of the guarantee or warranty;

- (3) The conditions, if any, that the purchaser must fulfill before the guarantor or warrantor must perform the guarantor's or warrantor's obligations;
- (4) The obligations of the guarantor or warrantor, including obligations as to repair or replacement of hearing aids and refunding of the purchase price or part of the purchase price; and
- (5) The identity and address of the guarantor or warrantor. [PL 2007, c. 369, Pt. C, §3 (NEW); PL 2007, c. 369, Pt. C, §5 (AFF).]

G. When an individual practicing the fitting and sale of hearing aids furnishes to a purchaser a hearing aid of a different make, model or specification than requested, the notice must include a statement of this fact. [PL 2007, c. 369, Pt. C, §3 (NEW); PL 2007, c. 369, Pt. C, §5 (AFF).]

H. The notice must conspicuously include the following: "An examination or representation made by a dealer-licensee in connection with the fitting and selling of a hearing aid or aids is not an examination, diagnosis or prescription by an individual licensed to practice medicine in this State and may not be regarded as medical opinion or advice." [PL 2007, c. 369, Pt. C, §3 (NEW); PL 2007, c. 369, Pt. C, §5 (AFF).]

I. The board may adopt rules to define further the requirements of this section in order to provide the purchaser with additional information to be contained in the notice provisions. Rules adopted pursuant to this paragraph are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. [PL 2007, c. 369, Pt. C, §3 (NEW); PL 2007, c. 369, Pt. C, §5 (AFF).]

J. A provision of a contract that limits or conditions in any way the right guaranteed to purchasers by this section is deemed to be against public policy and void. A violation of the requirements of this section, in addition to being unethical conduct as defined by the regulations pursuant to section 17307, constitutes a violation of the Maine Unfair Trade Practices Act. [PL 2007, c. 369, Pt. C, §3 (NEW); PL 2007, c. 369, Pt. C, §5 (AFF).]

K. A dealer-licensee may not sell or furnish a hearing aid to a person 18 years of age or younger without a written statement, signed by a physician with specialized training in the field of otolaryngology, that the person has had an ear or hearing examination within 90 days of the purchase or furnishing of the hearing aid and that a hearing aid is recommended for the person. The board shall adopt rules for the requirements for reexamination. Rules adopted pursuant to this paragraph are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

The board shall by rule list and define certain medical conditions affecting hearing. If a dealer has notice of the existence of one or more of the conditions in the case of a prospective purchaser of a hearing aid, whether by the dealer-licensee's observation of the prospective purchaser or by information furnished by the prospective purchaser, fitting of the hearing aid must be delayed until the purchaser has had an ear or hearing examination administered by a physician with specialized training in the field of otolaryngology or by an audiologist who, as a result of such an examination, recommends in writing a hearing aid for the prospective purchaser.

Nothing in this chapter may be construed to require an ear or hearing examination by a physician or audiologist of a person who objects to the examination on the grounds that the examination conflicts with the tenets and practices of a church or religious denomination of which the person is a member or adherent. [PL 2007, c. 369, Pt. C, §3 (NEW); PL 2007, c. 369, Pt. C, §5 (AFF).]
[PL 2007, c. 369, Pt. C, §3 (NEW); PL 2007, c. 369, Pt. C, §5 (AFF).]

SECTION HISTORY

PL 2007, c. 369, Pt. C, §3 (NEW). PL 2007, c. 369, Pt. C, §5 (AFF).

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