

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Committee on Commerce and Tourism

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BILL: SB 126

INTRODUCER: Senator Bradley

SUBJECT: Prescription Hearing Aids

DATE: February 28, 2025

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Smith	Brown	HP	<b>Favorable</b>
2.	McMillan	McKay	CM	<b>Pre-meeting</b>
3.			RC	

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## **I. Summary:**

SB 126 authorizes the sale and distribution of prescription hearing aids to consumers through the mail if a licensed hearing aid specialist or a licensed audiologist conducts required testing procedures before the sale.

The bill provides an effective date of July 1, 2025.

## **II. Present Situation:**

### **Hearing Aids**

#### ***Federal Regulations***

The Food and Drug Administration (FDA) Reauthorization Act of 2017 (FDARA), s. 709,<sup>1</sup> directed the FDA to establish a category of over-the-counter (OTC) hearing aids through rulemaking and set forth various requirements for OTC hearing aids, including defining general controls for reasonable assurance of safety and effectiveness, as well as Federal preemption provisions.

On August 17, 2022, the FDA finalized a rule revising 21 C.F.R. 800,<sup>2</sup> 801,<sup>3</sup> and 874.<sup>4</sup> The FDA's new rule establishes a new category for OTC hearing aids. An OTC hearing aid is an air-

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<sup>1</sup>21 U.S.C. 301, Food and Drug Administration Reauthorization Act of 1917, s. 709, *Regulation of Over-The-Counter Hearing Aids*, available at <https://www.congress.gov/115/plaws/publ52/PLAW-115publ52.pdf> (last visited Feb. 28, 2025).

<sup>2</sup> 21 CFR 800.30, available at <https://www.ecfr.gov/current/title-21/chapter-I/subchapter-H/part-800#800.30> (last visited Feb. 28, 2025).

<sup>3</sup> 21 CFR 801.60 - 63, available at <https://www.ecfr.gov/current/title-21/chapter-I/subchapter-H/part-801/subpart-C> (last visited Feb. 28, 2025).

<sup>4</sup> 21 CFR 874.5300 available at <https://www.ecfr.gov/current/title-21/chapter-I/subchapter-H/part-874/subpart-F/section-874.5300> (last visited Feb. 28, 2025).

conduction hearing aid that does not require implantation or other surgical intervention and is intended for use by a person aged 18 or older to compensate for perceived mild to moderate hearing impairment. The device, through tools, tests, or software, allows the user to control the hearing aid and customize it to the user's hearing needs. The device may use wireless technology or may include tests for self-assessment of hearing loss.

The device is available OTC, without the supervision, prescription, or other order, involvement, or intervention of a licensed person, to consumers through in-person transactions, by mail, or online, provided that the device satisfies the requirements for consumers with "perceived mild to moderate hearing impairment" who wish to buy lower cost hearing aids not bundled with professional services and not requiring professional advice, fitting, adjustment, or maintenance. The rule became effective on October 16, 2022.<sup>5</sup>

The FDA rule includes provisions for simplified labeling, output limits, maximum insertion depth, and conditions for sale and distribution for both OTC and prescription hearing aids. The rule prohibits states from requiring the order, involvement, or intervention of a licensed person for consumers to access OTC hearing aids; a licensed person may service, market, sell, dispense, provide customer support for, or distribute OTC hearing aids.

### ***Florida Regulations***

In Florida, there are currently 1,289 licensed hearing aid specialists, and 1,654 licensed audiologists.<sup>6</sup> In 2023, Florida's practice acts for hearing aid specialists and audiologists were amended to distinguish between prescription hearing aids and OTC hearing aids to conform to the new FDA rules.<sup>7</sup> Under Florida law, prescription hearing aids are dispensed by hearing aid specialists and audiologists who are subject to the Department of Health (DOH) regulation under the Board of Hearing Aid Specialist (BHAS) and Board of Speech-Language Pathology and Audiology (BSLPA).<sup>8</sup> Selling or distributing prescription hearing aids through the mail to the ultimate consumer is unlawful and is punishable as a misdemeanor of the second degree.<sup>9</sup>

### ***Scope of Practice***

Florida law defines the scope of practice for hearing aid specialists and audiologists and specifies the procedures which each health care practitioner is authorized to perform. Both hearing aid specialists and audiologists may provide services through telehealth within this state.<sup>10</sup> Out-of-state hearing aid specialists and audiologists may register to provide services through telehealth to patients located in this state.<sup>11</sup>

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<sup>5</sup> 21 CFR 800.30, available at <https://www.ecfr.gov/current/title-21/chapter-I/subchapter-H/part-800#800.30> (last visited Feb. 28, 2025).

<sup>6</sup> Florida Department of Health, Division of Medical Quality Assurance, *Annual Report and Long Range Plan, 2023 - 2024*, available at <https://mqawebteam.com/annualreports/2324/> (last visited Feb. 28, 2025).

<sup>7</sup> Laws of Fla. 2023-71.

<sup>8</sup> See Part II, ch. 484, and Part I, ch. 468, F.S., respectively.

<sup>9</sup> Sections 468.1265 and 484.054, F.S.

<sup>10</sup> Section 456.47, F.S.

<sup>11</sup> *Id.*

### ***Hearing Aid Specialists***

Under s. 484.041, F.S., hearing aid specialists may dispense prescription hearing aids. Dispensing prescription hearing aids includes conducting and interpreting hearing tests for purposes of selecting suitable hearing aids, making earmolds or ear impressions for the fitting of hearing aids, and providing appropriate counseling regarding a suitable hearing aid device. This also includes all acts pertaining to the selling, renting, leasing, pricing, delivery, and warranty of hearing aids.<sup>12</sup>

Hearing aid specialists are licensed and regulated by the BHAS.<sup>13</sup> Licensure for a hearing aid specialist is in accordance with s. 484.045, F.S., and includes the following requirements:

- Graduation of an accredited high school or its equivalent;
- Meeting one of the qualifying methods:
  - Completing a Florida sponsored training program;
  - Having a valid, current license as a hearing aid specialist or its equivalent from another state and has been actively practicing<sup>14</sup> in such capacity for at least 12 months; or
  - Is currently certified by the National Board for Certification in Hearing Instrument Sciences (NBC-HIS) and has been actively practicing for at least 12 months.
- Has successfully completed:
  - International Licensing Examination (ILE); or
  - Active certification from the National Board for Certification in Hearing Instrument Sciences (NBC-HIS).
- Completion of a two-hour course relating to Florida laws and rules taught by an instructor approved by the BHAS.

Effective July 1, 2025, an applicant for licensure must also submit to a background screening test in accordance with s. 456.0135, F.S.

### ***Audiologists***

The practice of audiology includes the application of principles, methods, and procedures for the prevention, identification, evaluation, consultation, habilitation, rehabilitation, instruction, treatment, and research, relative to hearing and the disorders of hearing, and to related language and speech disorders.<sup>15</sup> Licensed audiologists may offer, render, plan, direct, conduct, consult, or supervise services to individuals or groups of individuals who have or are suspected of having disorders of hearing, including prevention, identification, evaluation, treatment, consultation, habilitation, rehabilitation, instruction, and research.<sup>16</sup> This includes the fitting and dispensing of hearing aids. They may also provide the following:

- Participate in hearing conservation, evaluation of noise environment, and noise control;

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<sup>12</sup> Section 484.041(3)(a), F.S.

<sup>13</sup> Section 484.042, F.S.

<sup>14</sup> See Fla. Admin. Code R. 64B6-2.002 (2025), which defines “actively practicing” as dispensing hearing aids directly to clients for at least 12 months, as shown by at least two sales receipts per month for at least 12 months, each receipt bearing the applicant’s signature and address of place(s) of business.

<sup>15</sup> Section 468.1125(6)(a), F.S.

<sup>16</sup> Section 468.1125(6)(b), F.S.

- Conduct and interpret tests of vestibular function and nystagmus, electrophysiologic auditory-evoked potentials, central auditory function, and calibration of measurement equipment used for such purposes;
- Habilitate and rehabilitate, including, but not limited to, hearing aid evaluation, prescription, preparation, fitting and dispensing, assistive listening device selection and orientation, auditory training, aural habilitation, aural rehabilitation, speech conservation, and speechreading;
- Fabricate earmolds;
- Evaluate tinnitus; and
- Conduct speech and language screening, limited to a pass-fail determination for identifying individuals with disorders of communication.<sup>17</sup>

Audiologists are licensed and regulated by the BSLPA.<sup>18</sup> Licensure for audiologists includes, among other requirements, the following:

- Submission of an application and all required fees.
- A doctoral degree with a major emphasis in audiology and:
  - Applicants who have earned a doctoral degree from an approved program before January 1, 2008, must complete 60 semester hours, 24 of which must be in audiology.<sup>19</sup>
  - Applicants who earned a doctoral degree from an approved program after January 1, 2008, must complete 75 semester hours.
  - 300 clock hours of supervised experience (clinical practicum) with at least 200 hours in the area of audiology.
- Eleven months of supervised clinical experience. This requirement may be met if the applicant holds a doctoral degree, meets the requirements of s. 468.1155, F.S., and can demonstrate one year of clinical work experience within the doctoral program.
- Applicants for licensure as an audiologist with a master's degree conferred before January 1, 2008, must document that, prior to licensure, the applicant completed one year of clinical work experience.
- Passing the licensure examination no more than three years prior to the date of the application.<sup>20</sup>

Effective July 1, 2025, an applicant for licensure must also submit to a background screening test in accordance with s. 456.0135, F.S.

### ***Minimal Procedures and Equipment***<sup>21</sup>

Florida law requires hearing aid specialists, and audiologists only when indicated, to perform all of the following procedures to be used in the fitting and selling of prescription hearing aids:

- Pure tone audiometric testing by air and bone to determine the type and degree of hearing deficiency.
- Effective masking.

<sup>17</sup> *Id.*

<sup>18</sup> Section 468.1135, F.S.

<sup>19</sup> Section 468.1155, F.S.

<sup>20</sup> Section 468.1185, F.S. and Fla. Admin. Code R. 64B20-2.005 (2022) The BSDPA has designated the Educational Testing Services Praxis Series Examination in Speech-Language Pathology or Audiology as the licensure examination.

<sup>21</sup> Sections 468.1225 and 484.0501, F.S. See also Fla. Admin. Code R. 64B6-6, 64B20-8, and 64B20-9.

- Appropriate testing to determine speech reception thresholds, speech discrimination scores, the most comfortable listening levels, uncomfortable loudness levels, and the selection of the best fitting arrangement for maximum hearing aid benefit.

A wide range audiometer that meets the specifications of the American National Standards Institute for diagnostic audiometers, and a speech audiometer or a master hearing aid must be used by hearing aid specialists, and audiologists only when indicated, in the fitting and selling of prescription hearing aids.

A hearing aid specialist must make a final fitting ensuring physical and operational comfort of the prescription hearing aid. An audiologist must make such a final fitting only when indicated.

Each audiometric test must be made in a testing room that has been certified by the DOH and meets certain requirements established in statute and rule. However, this requirement may be waived by a client who has been provided written notice of the benefits and advantages of having the test conducted in a certified testing room.

### **III. Effect of Proposed Changes:**

**Sections 1 and 2** of the bill amend ss. 468.1265 and 484.054, F.S., to create an exception that would allow for prescription hearing aids to be sold and distributed to a consumer through the mail if, before the sale, all required testing procedures as outlined in s. 468.1225, F.S., or s. 484.0501, F.S., are conducted by an audiologist licensed under s. 468.1185, F.S., or a hearing aid specialist licensed under s. 484.045, F.S., respectively. The two statutory sections are identical.

Under the bill, if a hearing aid specialist or an audiologist (as indicated) fails to complete all required testing procedures in each enumerated section, then the practitioner would commit a misdemeanor of the second degree, punishable as provided in s. 775.072, F.S., or s. 775.083, F.S.<sup>22</sup>

**Section 3** of the bill provides an effective date of July 1, 2025.

### **IV. Constitutional Issues:**

#### **A. Municipality/County Mandates Restrictions:**

None.

#### **B. Public Records/Open Meetings Issues:**

None.

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<sup>22</sup> Section 775.082(4)(b), F.S., provides that a person who has been convicted of a misdemeanor of the second degree may be sentenced to a definite term of imprisonment not to exceed 60 days. Section 775.083(1)(e), F.S., provides that fines for a misdemeanor of the second degree may not exceed \$500.

**C. Trust Funds Restrictions:**

None.

**D. State Tax or Fee Increases:**

None.

**E. Other Constitutional Issues:**

Under the bill, a hearing aid specialist or audiologist must complete “all required testing procedures *outlined in* s. 468.1225 or s. 484.0501” before the sale of prescription hearing aids distributed through the mail. Section 468.1225(7), F.S., gives rulemaking authority to the Board of Speech-Language Pathology and Audiology, and s. 484.0501(7), F.S., gives rulemaking authority to the Board of Hearing Aid Specialists. It is unclear whether a court would interpret the requirements in the respective rules to be included as “required testing procedures outlined in” those sections because the rulemaking authority is derived therein.

**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

To implement the bill, the Department of Health would need to develop a communication plan to ensure compliance and operational readiness. The department anticipates that this would include updating websites and the Artificial Intelligence chatbot, notifying stakeholder groups, and communicating the statutory changes to staff through training.<sup>23</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends sections 468.1265 and 484.054 of the Florida Statutes.

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<sup>23</sup> Department of Health, Senate Bill 126 Legislative Analysis (Feb. 11, 2025) (on file with the Senate Committee on Health Policy).

**IX. Additional Information:**

**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

**B. Amendments:**

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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