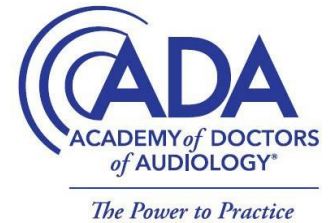


October 15, 2023

Daniel Rosenthal, PE (Chair)  
Hearing Care Professionals Technical Review Committee  
Nebraska Department of Health & Human Services  
Attn: Ron Briel, Credentialing Review  
PO Box 94986  
Lincoln, NE 68509-4986  
*Sent via e-mail*



**RE: Nebraska Credentialing Review for the Nebraska Hearing Society, Credentialing Review Program (407)**  
**Position: Strongly Oppose**

Dear Mr. Rosenthal,

The Academy of Doctors of Audiology (ADA), a leading national association dedicated to evidence-based clinical and business practices in the delivery of audiologic and vestibular care, represents audiologists in Nebraska and across the United States who treat hundreds of thousands of patients each year. ADA appreciates the opportunity to provide comments to help inform the Hearing Care Professionals Technical Review Committee (Committee) regarding the proposal, *Nebraska Credentialing Review for the Nebraska Hearing Society*, put forward by the International Hearing Society (IHS) and its affiliate, the Nebraska Hearing Society (NHS) under the Credentialing Review Program (407) on July 14, 2023, and revised and resubmitted on October 5, 2023.

ADA strongly opposes the IHS/NHS proposal for the following reasons:

- The proposal would eliminate important consumer protections contained in the existing statute under Nebraska law 38-1505, 38-1506, 38-1511, 38-1512, and 38-1514, in some cases eliminating and replacing entire sections of statute with unrelated provisions.
- The proposal would authorize hearing instrument specialists (HIS) to perform and interpret audiologic diagnostic and treatment services without commensurate education, training, or supervision, posing significant risks of physical and financial harm to the citizens of Nebraska.
- The proposal would require education, training, testing, and license maintenance provisions that create a monopolistic tying scheme that unduly benefits the IHS, and its legal affiliates, NHS and the National Board for Certification in Hearing Instrument Sciences (NBC-HIS) financially and strategically.
- There are more than twice as many audiologists in the State of Nebraska than HIS, and their service areas coincide around hearing aids. The argument that this proposal will improve access to care is untrue. In fact, many of the provisions are designed to undermine access to care, especially in rural areas.

- The proposal would steer patients to IHS-member retail clinics and mobile businesses, while unfairly restricting access to telehealth services, increasing wait times, and costs for consumers.
- The proposal would unfairly discriminate against--and create unjust financial and compliance burdens for other licensed professions/professionals who perform the clinical services that IHS/NHS seek to include in the proposed scope expansion. Affected professions include audiology assistants, audiologists, nurse practitioners, physicians, physician assistants, psychologists, and speech-language pathologists. Allowing HIS to encroach on the scopes of practice of other professions, without similar statutory oversight, including requiring similar training, education, and licensure requirements would equate to the State picking winners and losers.

**Table 1: Comparison of Current State of Nebraska Statutes Relating to Hearing Instrument Specialists Practice Act and NHS/IHS Proposal: Definition of the Scope of Practice for Hearing Aid Fitting**

Current Nebraska Statute Governing Hearing Instrument Specialists	NHS/IHS Proposal
<p><b>38-1505. Practice of fitting hearing instruments, defined.</b> Practice of fitting hearing instruments means the measurement of human hearing by means of an audiometer or by other means approved by the board solely for the purpose of making selections, adaptations, or sale of hearing instruments. The term also includes the making of impressions for earmolds. A dispenser, at the request of a physician or a member of related professions, may make audiograms for the professional's use in consultation with the hard-of-hearing.</p>	<p><b>38-1505. Amended to read:</b> Dispensing of hearing instruments means the following activities:</p> <ol style="list-style-type: none"> <li>(1) Eliciting patient case histories, including medical history, otological history, pharmacological history, amplification history, and patient attitudes and expectations;</li> <li>(2) Administering otoscopy for the purpose of identifying possible otological conditions, including, but not limited to, any of the conditions related to warnings found in the regulations of the federal Food and Drug Administration, 21 C.F.R. 801.420, as such regulations existed on January 1, 2023, which may indicate the need for a medical referral or which may have a bearing on needed rehabilitative measures, outcomes, or recommendations;</li> <li>(3) Administering and interpreting tests of human hearing and middle ear function, including appropriate objective and subjective methodology and measures, such as tympanometry;</li> <li>(4) Determining candidacy for hearing instruments, hearing-assistive devices, or referral for cochlear implant evaluation or other clinical, rehabilitative, or medical interventions;</li> <li>(5) Selecting or fitting appropriate hearing instruments and assistive devices, including appropriate technology, identifying electroacoustic targets, programming parameters, and choosing special applications, as indicated;</li> </ol>

	<p>(6) Assessing hearing instrument efficacy utilizing appropriate fitting verification methodology and equipment, which may include real ear measures or speech mapping, and electroacoustic analysis equipment;</p> <p>(7) Assessing hearing instrument benefits through appropriate validation measures, which may include communication assessment questionnaires or speech audiometry;</p> <p>(8)(a) Taking ear impressions or electronic scans by any method used for the purpose of creating earmolds and (b) preparing earmolds for hearing instruments, assistive devices, telecommunications applications, ear protection, and other related applications;</p> <p>(9) Designing and modifying earmolds and auditory equipment requisite to meet a patient's needs;</p> <p>(10) Providing counseling and aural rehabilitative services in the use and care of hearing instruments and assistive devices and for effectively utilizing communication coping strategies and other approaches to foster optimal patient rehabilitation;</p> <p>(11) Providing tinnitus management;</p> <p>(12) Providing supervision and inservice training of those entering the dispensing profession;</p> <p>(13) Provide post-fitting care and services and hearing instrument care and repair services; or</p> <p>(14) All other acts of hearing assessment pertaining to hearing testing or the selling, renting, leasing, and delivery of hearing instruments.</p> <p><i>*Additionally, the NHS/IHS proposal seeks to add cerumen management services to the HIS scope of practice and included draft provisions for training under Sec. 21 of the proposal.</i></p>
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**Table 2: Comparison of Current State of Nebraska Statutes Relating to Hearing Instrument Specialists Practice Act and NHS/IHS Proposal: Definition Sell, Sale or Dispense**

Current Nebraska Statute Governing Hearing Instrument Specialists	NHS/IHS Proposal
<p><b>38-1506. Sell, sale, or dispense, defined.</b>                      Sell, sale, or dispense means any transfer of title or of the right to use by lease, bailment, or any other contract, excluding (1) wholesale transactions with</p>	<p><b>38-1506. Amended to read:</b> Hearing instrument specialist means a person who engages in the practice of dispensing of hearing instruments. Medical liaison means an otolaryngologist or a</p>

<p>distributors or dispensers and (2) distribution of hearing instruments by nonprofit service organizations at no cost to the recipient for the hearing instrument.</p>	<p>licensed physician if no otolaryngologist is available with whom a cooperative arrangement for consultation is established by a hearing instrument specialist. Providing tinnitus management means the assessment of tinnitus, recommendation and selection of tinnitus management devices, therapy, and counseling in accordance with section 22 of this act provided to a patient who exhibits symptoms of tinnitus during an evaluation of hearing loss conducted for the purpose of determining the appropriateness of hearing instruments or tinnitus devices and includes administering and interpreting tests of human hearing and middle ear function, including appropriate objective and subjective methodology and measures, such as tympanometry.</p>
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**Analysis: The proposal would provide unprecedented expansion of scope of practice for HIS, inconsistent with other regional and national state jurisdictions, through amendments to section 38-1505 and 38-1506.**

Nebraska’s current scope of practice for HIS recognizes the HIS function as primarily that of a consultative salesperson, who performs hearing evaluations that are limited to testing for the purpose of selling, dispensing, and fitting a hearing aid. The current Nebraska HIS scope of practice is consistent with those of the vast majority of states. An online review of statutes from the 50 U.S. states governing the fitting, sale, and dispensing of hearing aids revealed the following (see enclosed spreadsheet):

- No U.S. state explicitly authorizes HIS to diagnose hearing disorders or tinnitus under their governing practice act.
- Forty-seven (47) states restrict hearing instrument specialists to performing hearing testing solely for the purpose of selecting, fitting, adapting, and/or selling a hearing aid.
- One state (Nevada) explicitly includes performing tests of middle ear function under the definition of the practice of dispensing and fitting hearing aids.
- One state (North Carolina) specifically includes providing a tinnitus device recommendation within an HIS scope of practice.
- Two states in the U.S. (North Carolina and Tennessee) explicitly include the removal of cerumen within the scope of services that HIS can perform under the statutes governing hearing aid dispensing and fitting.

Performing diagnostic, cerumen management, and tinnitus evaluation and management services are outside the recognized scope of practice for HIS. States continue to enact new laws to prohibit these activities. For example, in September 2023, the State of Delaware enacted amendments to its HIS practice statute, specifically prohibiting a hearing aid dispenser [HIS] from providing cerumen management services,

adapting or adjusting prescription hearing aids to conduct sound therapy treatment for tinnitus management, or verbally or in writing making a statement or reference to a prospective prescription hearing aid user regarding any audiologic or medical condition or diagnosis (Laws of Delaware, 2023).

In addition to seeking to dramatically expand HIS scope of practice under 38-1505, the IHS/NHS proposal completely eliminates the current content of 38-1506, defining sell, sale, or dispense as it relates to transactions involving hearing instrument specialists and replaces the section with a new definition for HIS that creates a definition for a “medical” liaison and a definition for tinnitus management services that would be included in HIS’ scope of practice, under the proposal.

**Analysis: The proposal fails to acknowledge the complexity of audiologic disorders and associated diagnostic audiologic evaluations, cerumen management, tinnitus evaluation and treatment, and aural rehabilitation procedures.**

The diagnosis of audiologic and other related disorders, including vestibular disorders, tinnitus, and auditory processing, is accomplished by administering and interpreting a comprehensive clinical case history, conducting qualitative and quantitative test procedures to obtain behavioral, electroacoustic, and electrophysiologic measures of the peripheral auditory, central auditory, vestibular, and other related systems, and interpreting test results to determine a diagnosis. Additional diagnostic screening procedures are also performed, which are used to diagnose, treat, and refer. There are numerous audiological diagnostic tests and screening tools that are used by audiologists to diagnose and develop treatment plans for their patients (Hoth and Baljic, 2017, Spoor, 2021). Because of the complex nature of audio-vestibular diagnoses, Medicare statutes limit reimbursement for diagnostic audiology services to physicians and audiologists.

Cerumen management is the removal of earwax from the ear canal that impedes its visualization or that of the tympanic membrane. The ability to perform cerumen removal requires comprehensive training in the anatomy and physiology of the ear canal, pathologies of the ear, visual inspection techniques, as well as extensive experience in the use of curettes, irrigation equipment, and aural suctioning equipment. In addition, a deep understanding of infection control procedures, medical contraindications, and pharmacologic agents are essential. Complications associated with cerumen removal include damage to the external auditory canal, including bleeding, acute otitis externa, pain, dizziness, syncope, tinnitus, tympanic membrane perforation, nausea and vomiting, and even cardiac arrest (McCarter et al., 2007, Schwartz et al, 2017).

Tinnitus, commonly referred to as “ringing in the ears,” is the perception of sound when there is not an external source. Tinnitus carries a complex pathophysiology and is almost always a symptom of an underlying condition such as hearing loss, vascular disorder, tumor, disease, or injury to the head, neck, or inner ear, or a dental or joint problem (Han et al., 2009). Tinnitus can also be a side effect of ototoxic medications including certain antibiotics, chemotherapy, and non-steroidal anti-inflammatory drugs. However, in many cases, an underlying physical cause for tinnitus is not identified (Swain et al, 2016). Tinnitus is associated with increased depression, anxiety, and somatic symptom disorder, and patients who seek medical treatment for tinnitus are particularly vulnerable (Hackenberg et al. 2023). The evaluation and management of tinnitus requires a multi-faceted, interdisciplinary approach that often includes a physician, audiologist, and psychologist/psychiatrist.

Aural rehabilitation/auditory rehabilitation includes a broad ranges of therapeutic treatment services delivered by audiologists and speech-language pathologists to individuals experiencing hearing loss, tinnitus, hyperacusis, and central auditory processing disorders. There is no one-size-fits-all approach to aural rehabilitation, and a comprehensive diagnostic evaluation is essential to developing an effective plan of care.

**Table 3: Comparison of Current State of Nebraska Statutes Relating to Hearing Instrument Specialists Practice Act and NHS/IHS Proposal: Conditions for Sale**

Current Nebraska Statute Governing Hearing Instrument Specialists	NHS/IHS Proposal
<p><b>38-1511. Sale; conditions.</b></p> <p>(1) Any person who practices the fitting and sale of hearing instruments shall deliver to each person supplied with a hearing instrument a receipt which shall contain the licensee's signature and show his or her business address and the number of his or her certificate, together with specifications as to the make and model of the hearing instrument furnished, and clearly stating the full terms of sale. If a hearing instrument which is not new is sold, the receipt and the container thereof shall be clearly marked as used or reconditioned, whichever is applicable, with terms of guarantee, if any.</p> <p>(2) Such receipt shall bear in no smaller type than the largest used in the body copy portion the following: The purchaser has been advised at the outset of his or her relationship with the hearing instrument specialist that any examination or representation made by a licensed hearing instrument specialist in connection with the fitting and selling of this hearing instrument is not an examination, diagnosis, or prescription by a person licensed to practice medicine in this state and therefor must not be regarded as medical opinion or advice.</p>	<p><b>38-1511. Amended to read:</b></p> <p>(1) A licensed hearing instrument specialist shall enter into a written contract for each sale of a hearing instrument which states the terms of the sale.</p> <p>(2) A licensee shall, at the time of delivery of the hearing instrument, provide the patient with a receipt containing the signature, regular business address, and license number of the licensee; the brand, model, manufacturer or manufacturer's identification code, and serial number of the hearing instrument; and the amount charged for the hearing instrument. The receipt shall also specify whether the hearing instrument is new, used, or rebuilt, as provided in 21 C.F.R. 801.420, as such regulation existed on January 1, 2023; the length of time and other terms of the guarantee; and by whom the hearing instrument is guaranteed.</p> <p>(3) No hearing instrument may be sold to any person unless both the packaging containing the hearing instrument and the itemized receipt are in compliance with all applicable laws and regulations.</p> <p>(4) Upon delivery, the licensed hearing instrument specialist shall confirm the physical and operational performance of the hearing instrument. If a patient purchases a hearing instrument from a licensee outside of the licensee's regular place of business and the regular place of business is beyond a reasonable distance, as determined by the board, the licensee shall provide the patient the address of an affiliate location with which the licensee is associated that is within a reasonable distance, at which a licensed hearing instrument specialist or audiologist is available for fitting services.</p> <p>(5) Any seller offering for sale or selling a hearing</p>

	<p>instrument in this state or to a resident of this state shall make available in this state an in person fitting of the hearing instrument by a licensed hearing instrument specialist in this state prior to the sale.</p> <p>Sec. 27.</p> <p>(1) A licensed hearing instrument specialist shall keep and maintain in the licensee's office or place of business the following records: (a) Results of tests and other records as they pertain to hearing assessments conducted by the licensee and the dispensing of hearing instruments by the licensee; (b) A copy of the written contract and, if executed, signed medical evaluation waiver; and (c) Copies of such other records as the department, with the recommendation of the board, reasonably requires.</p> <p>(2) Such records shall be kept and maintained by the licensee for a period of seven years.</p> <p>Sec. 28. A licensed hearing instrument specialist who is certified by the National Board for Certification in Hearing Instrument Sciences or has an advanced credential recognized or offered by the International Hearing Society may work for a company or organization as a trainer and provide specialized training in the practical application of hearing instrument sciences.</p>
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**Analysis: As Table 3 illustrates, the proposal would eliminate provisions under 38-1511 that promote transparency and add provisions that reduce consumer choice and access -- and advantage certain businesses and organizations.**

*The proposal would remove and important consumer protection--the requirement for HIS to disclose the following to consumers:*

*“The purchaser has been advised at the outset of his or her relationship with the hearing instrument specialist that any examination or representation made by a licensed hearing instrument specialist in connection with the fitting and selling of this hearing instrument is not an examination, diagnosis, or prescription by a person licensed to practice medicine in this state and therefor must not be regarded as medical opinion or advice.”*

The proposal also introduces a requirement for an in-person fitting, where none currently exists, effectively eliminating opportunities for hearing aid fitting services delivered via telehealth, thereby reducing consumer access and choice, and steering consumers into retail clinics that advantage proposal sponsors and their members. Further, the proposal adds a new “trainer” designation that applies only to HIS that have received a credential from IHS and/or National Board for Certification in Hearing Instrument Sciences (NBC-HIS).

Many of the provisions contained under section 38-1511 of the proposal appear arbitrary and self-serving and are designed to eliminate consumer protections and choices that should be afforded Nebraskans.

**Table 4: Comparison of Current State of Nebraska Statutes Relating to Hearing Instrument Specialists Practice Act and NHS/IHS Proposal: Requirements for Licensure and Examination**

Current Nebraska Statute Governing Hearing Instrument Specialists	NHS/IHS Proposal
<p><b>38-1512. License; examination; conditions.</b></p> <p>(1) Any person may obtain a hearing instrument specialist license under the Hearing Instrument Specialists Practice Act by successfully passing a qualifying examination if the applicant:</p> <p>(a) Is at least twenty-one years of age; and</p> <p>(b) Has an education equivalent to a four-year course in an accredited high school.</p> <p>(2) The qualifying examination shall consist of written and practical tests. The examination shall not be conducted in such a manner that college training is required in order to pass. Nothing in this examination shall imply that the applicant is required to possess the degree of medical competence normally expected of physicians.</p> <p>(3) The department shall give examinations approved by the board. A minimum of two examinations shall be offered each calendar year.</p>	<p><b>38-1512. Amended to read:</b></p> <p>(1) Any person may obtain a hearing instrument specialist license under the Hearing Instrument Specialists Practice Act by successfully passing a qualifying examination pursuant to section 38-1514 if the applicant provides verification acceptable to the department, upon recommendation of the board, that such person:</p> <p>(a) Is at least twenty-one years of age; and (b) Has an education equivalent to a four-year course in an accredited high school; and (c)(i) Has completed the minimum number of practicum hours prescribed by the board; (ii) Has a two-year degree in hearing instrument sciences, or an equivalent as determined by the board, from an accredited institution approved by the board;</p> <p>(iii) Has a master's or doctoral degree in audiology from an accredited institution approved by the board; (iv) Has held a current, unsuspended, and unrevoked license to dispense hearing instruments from another jurisdiction for at least twelve of the last eighteen months prior to taking the examination; (v) Is certified by the National Board for Certification in Hearing Instrument Sciences at the time of taking the examination; or (vi) Holds an advanced credential offered by the International Hearing Society at the time of taking the examination.</p> <p>(2) The department, with the recommendation of the board, may determine whether completion of a licensure program from outside of the United States qualifies a person to take the examination in this state.</p> <p>(3) The department, upon recommendation of the board, may waive either or both components of the examination pursuant to section 38-1514 for licensure as a hearing instrument specialist if the person has passed the same examination as provided in section 6(2) of this act or a substantially</p>



	<p>equivalent examination as determined by the board.</p> <p>(4) The department, with the recommendation of the board, shall determine whether a person has met the requirements to be eligible to take the examination.</p>
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**Analysis: HIS proposed licensure requirements, contained in 38-1512 are inadequate to allow for the proposed scope expansion.**

ADA noted with interest that the amended IHS/NHS proposal, submitted on October 5, 2023, includes additional mechanisms to meet educational requirements for eligibility to take the licensing exam. ***However, a cursory inspection reveals that the proposal would actually maintain the status quo (21 years of age and obtain a high school education) as the minimum requirement for eligibility for licensure to accommodate the expanded scope of practice.***

- There are no additional requirements for HIS who are licensed in Nebraska or those who have held an HIS license from another state, for at least 12 of the past 18 months. Further, the Department, upon recommendation of the board may waive either or both components of the examination for licensure as an HIS if the applicant has passed the same examination as provided in Nebraska or a substantially equivalent examination “as determined by the board.” Therefore, any (every) licensed HIS will be effectively grandfathered into the new scope of practice, under the proposal. This proposed provision offers no consumer protections as it requires no meaningful additional training to perform the proposed advanced clinical procedures.
- The proposal indicates that completing the minimum number of practicum hours is one way to become eligible to take the exam. The proposal allows “the Board” to determine the minimum number of practicum hours required, leaving the decision to be modified at will. Interestingly, the IHS website includes two pathways to licensure, one of which includes the IHS apprenticeship pathway and or their extensive distance learning program that can be combined with a clinical practicum. This proposed provision offers no consumer protections as it would amount to untrained people teaching untrained people to perform the proposed advanced clinical procedures.
- The provision allowing a licensee candidate to meet eligibility requirements by obtaining a two-year degree “or an equivalent” in hearing instrument sciences is disingenuous and misleading. There are only two colleges in the United States that currently offer an associates degree in hearing instrument sciences; one is located in Spokane, Washington and the other in DuPage, Illinois (Spokane Community College, 2023, College of DuPage, 2023). This provision is designed to give the illusion that there are readily available post-secondary training programs for HIS, when there are not.
- The proposal includes a provision that would allow those who are NBC-HIS certified and/or who hold an advanced credential from IHS are also eligible to take the licensure exam. This provision is impractical and totally unnecessary as those who are certified/hold an advanced credential would already be licensed in Nebraska or another jurisdiction and already eligible.

- The proposal includes a provision that would allow those with a master’s or doctorate in audiology to be eligible to take the HIS licensing exam. This provision is unnecessary as audiologists are exempt from HIS licensing in Nebraska. One can’t help but wonder if this provision was included to feign the appearance of advanced degree requirements for eligibility that are actually non-existent.

The requested scope expansion in the HIS proposal is completely out of step with evidence-based practices in the delivery of audiologic care, particularly when evaluated against the licensing and training requirements for similar and related professions. For example, Nebraska’s audiology practice statute defines the practice of audiology to include the prevention, assessment, habilitation, rehabilitation, and maintenance of persons with hearing, auditory function, and vestibular function impairments and related impairments (allows for cerumen management, tinnitus management, and aural rehabilitation). Nebraska’s audiology practice act requires licensees to obtain a doctoral degree, 36-weeks of full-time supervised professional experience, and successful completion of a national exam. Other healthcare providers who independently perform similar services in Nebraska, such as physicians, physician assistants, advanced practice nurses, psychologists, and speech-language pathologists also receive extensive post-secondary education and clinical training.

The HIS proposal is also wholly incongruent with existing scope of practice and educational requirements for audiology assistants in Nebraska. Even though Nebraska requires postsecondary education for registered audiology assistants, they are still not authorized to perform any of the audiologic diagnostic and treatment services described in the HIS proposal.

**Table 5: Comparison of Current State of Nebraska Statutes Relating to Hearing Instrument Specialists Practice Act and NHS/IHS Proposal: Qualifying Examination Contents**

<b>Current Nebraska Statute Governing Hearing Instrument Specialists</b>	<b>NHS/IHS Proposal</b>
<p><b>38-1514. Qualifying examination; contents; purpose.</b>                      The qualifying examination provided in section 38-1512 shall be designed to demonstrate the applicant's adequate technical qualifications by:</p> <p>(1) Tests of knowledge in the following areas as they pertain to the fitting and sale of hearing instruments:</p> <p>(a) Basic physics of sound;</p> <p>(b) The anatomy and physiology of the ear; and</p> <p>(c) The function of hearing instruments; and</p> <p>(2) Practical tests of proficiency in the following techniques as they pertain to the fitting of hearing instruments:</p> <p>(a) Pure tone audiometry, including air conduction testing and bone conduction testing;</p> <p>(b) Live voice or recorded voice speech audiometry;</p> <p>(c) Masking when indicated;</p>	<p><b>38-1514. Amended to read:</b></p> <p>(1) The examination required by section 38-1512 for licensure as a hearing instrument specialist shall be comprised of two separate components: (a) A practical examination approved by the board that requires the examinee to demonstrate competence in dispensing of hearing instruments, which may be an examination developed and maintained by the International Hearing Society; and (b) A written or computer-based, psychometrically valid, competency examination approved by the board that tests the examinee for knowledge fundamental to the dispensing of hearing instruments, which may be an examination developed and maintained by the International Hearing Society.</p> <p>(2)(a) If an examinee fails more than one portion of the practical examination, the examinee shall retake the entire practical examination upon payment of the</p>

<p>(d) Recording and evaluation of audiograms and speech audiometry to determine proper selection and adaptation of a hearing instrument; and (e) Taking earmold impressions.</p>	<p>examination fee. (b) If an examinee fails only one portion of the practical examination, the examinee may retake that portion of the examination without payment of a fee. (c) If an examinee fails the jurisprudence examination or competency examination, the examinee shall retake the entire examination upon payment of the examination fee. (d) If an examinee fails either the practical or competency component of the examination and fails two subsequent reexaminations, the examinee shall be disqualified from retaking the examination a fourth time until the examinee meets with the board, presents an acceptable written training plan to the board for passing the components of the examination, and successfully completes that plan.</p>
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**Analysis: The proposal removes the clear HIS licensure exam content outline in 38-1514 and replaces it with an ambiguous process that includes provisions that advantage IHS/NHS and their members.**

The proposal would remove the current, clear HIS licensure exam outline and replace it with a process that favors the use of a written *and* practical exam, developed by IHS. This creates a conflict of interest in terms of examination development as it is inherently in IHS’ best interest to have HIS candidates pass the exam. The Department should have **no** confidence in an exam developed by an organization that is not equipped to evaluate the competency of individuals seeking licensure for advanced audiologic clinical procedures such as those being proposed.

The only clear plan in the entire amendment is the provision that will ensure yet another IHS-owned resource and product is tied to and included in the protocol. If the written and practical exam are developed by IHS, IHS stands to make a significant amount of money from its tied products such as study materials for the International Licensing Exam (which is already the written exam of choice for the State of Nebraska). The proposed provisions are monopolistic and have the potential to create conflicts of interest that cannot effectively be managed.

The proposed revisions in 38-1514 also provide excessive opportunities for retesting for candidates who fail the exam, leading to concerns that candidates will simply be pushed through one way or another.

**Analysis: Addition of Sec. 17 will reduce consumer choice, restrict access to care, and increase costs.**

The proposal includes provisions under Section 17 that arbitrarily require a face-to-face visit and mandatory procedures, prior to the dispensing of a hearing aid. This action will reduce consumer choice, access to care, and increase costs. During the COVID-19 pandemic, practices in many states faced negative consequences because of similar laws and regulations, which had unintended consequences of leaving patients without

access to hearing health care services. Technological advances and evidence-based innovations have made remote care (including testing and fitting a hearing aid) viable options for consumers, who would prefer to access services via telehealth. Laws that streamline telehealth should be incorporated into the proposal to encourage an additional pathway to access care, particularly for patients in rural areas.

Notably, this section also adds tympanometry and acoustic reflex testing to the list of tests that may be performed by an HIS as part of the test battery, which is inconsistent with the scope of practice for HIS in most states. This section also includes a provision that allows for hearing tests to be performed in an environment with ambient noise sound levels up to 54 A-weighted decibels.

On the whole, requirements in this section have been constructed to benefit retail clinics and hearing aid dispensers who desire to steer consumers into brick-and-mortar locations and/or to sell hearing aids to nursing home residents. Coincidentally, the HIS who testified at the September 5, 2023, meeting of the Hearing Care Professionals Technical Review Committee (one who owned a Beltone clinic, and one with a mobile practice that serves nursing homes) will benefit the most from this section. Unfortunately, these requirements will offer no consumer protections—consumers will face fewer choices and higher prices should this proposal be enacted.

**Analysis: Sec. 21 acknowledges that HIS are not qualified to independently perform cerumen removal or manage its complications.**

ADA noted with dismay, that the proposal includes a provision that would authorize HIS cerumen removal training to be governed by the IHS. This provision presents another conflict of interest that will undermine transparency, quality, and standardization in care delivery, and serves no legitimate public interest.

The proposal, as it is written, acknowledges that HIS are not qualified to independently perform cerumen removal or manage its complications. The proposal attempts to resolve this fundamental flaw by conjuring up a “medical liaison” position. Unfortunately, the “medical liaison” role, offers no additional protections for consumers and may instead create a false perception of medical oversight or supervision, where none exists. Given that cerumen removal is among the most common procedures to result in otology malpractice complaints, and, given that cerumen removal malpractice complaints are the most likely to lead to payment of the malpractice claim (Blake et al. 2013), it is not enough to rely on an ill-defined medical liaison to serve as the only safety net to protect unwitting consumers from the potential harm that cerumen removal by an unqualified provider imposes.

**Analysis: Sec. 22 doesn't even attempt to offer legitimate education or training protocols that would justify HIS scope expansion to include tinnitus assessment and management.**

Section 22 offers nothing more than a vague directive to licensed HIS to seek appropriate training and knowledge before delivering tinnitus assessment and treatment services. This lack of effort and emphasis on developing a protocol for educating, training, and assessing competencies of HIS in performing these services demonstrates a lack of respect and awareness of the challenges that tinnitus patients face, and the often-complex nature of their symptoms and management of those symptoms.

**Additional Information Not Disclosed in the Proposal**

- IHS and the National Board for Certification in Hearing Instrument Sciences (NBC-HIS) share an executive director and operate from a single office location, using shared resources (International Hearing Society, 2019). These organizations have a conflict of interest and have seeded this proposal with numerous provisions designed to benefit them financially and strategically, to create a monopoly, and to ensure that these organizations exclusively have control of the education, training, certification, continuing education, and licensure, contrary to the best interests of consumers.
- As noted, there are more than twice as many audiologists in the State of Nebraska than HIS, and their service areas coincide around hearing aids. The argument that this proposal will improve access to care is untrue. In fact, many of the provisions are designed to undermine access to care.

**ADA Recommends Rejection of the IHS/NHS Proposal**

ADA appreciates the opportunity to provide information to the Department and the Committee as it considers the *Nebraska Credentialing Review for the Nebraska Hearing Society*. **ADA strongly recommends that the Committee reject the proposal entirely and forward an unfavorable rating to the Department**, given the immense shortcomings highlighted in the ADA analysis. The proposal falls significantly short of its stated intentions and includes a host of provisions that will not only eliminate existing consumer protections but pose new substantial threats of financial risk and physical harm to Nebraskans.

ADA and its Nebraska members are committed to evidence-based practices in the delivery of hearing and balance health care. Please contact me at [sczuhajewski@audiologist.org](mailto:sczuhajewski@audiologist.org) if you have any questions or if I can assist you in any way.

Thank you,



Stephanie Czuhajewski, MPH, CAE Executive Director

Cc: Dawn Heiman, Au.D., President

Alicia D.D. Spoor, Au.D., Advocacy Chair

Nikki Kopetzky, Au.D., Nebraska Speech-Language Hearing Association (NSLHA)

*Enclosure: HIS Scope of Practice: A 50-State Comparison*

**References:**

- Laws of Delaware. Volume 84. Chapter 234. 152<sup>nd</sup> General Assembly. Formerly Senate Bill No. 141. 2023
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