

01/16/2021

SDSLHA Update re: HB 1041 establish the South Dakota Board of Speech-Language Pathology, Audiology, and Hearing Aid Dispensing and to repeal the South Dakota Board of Hearing Aid Dispensers and Audiologists and the South Dakota Board of Examiners for Speech-Language Pathology.

Background:

SDSLHA was informed in November, 2020 of the Department of Health plan to introduce legislation to combine the two licensing boards for our professions into 1 board during the 2021 legislative session. The Department of Health has stated that this action is taken at the direction of the Governor to address inefficiencies in state government by combining boards where possible, and to assist the public by decreasing the number of boards and committees they need to navigate through to find information.

HB 1041 is proposed by the Department of Health as part of a broader goal of reducing inefficiencies in state government by combining similar licensing boards. Suggested benefits of combining the licensing boards include 1) reduced costs with lower administrative costs, fewer board members, and fewer meetings, and 2) decreased public confusion with fewer licensing boards and commissions to navigate. The Department of Health has stated that the bill would only combine boards in the 2021 legislative session. Any updates to statutes that the professions would like to implement could be addressed in a future legislative session.

Since November 2020, SDSLHA has fielded input and questions from professionals and provided written and verbal input to the Department of Health regarding this legislation.

At this time, SDSLHA is communicating with the licensing boards for our professions, and the Department of Health to address concerns regarding the combination of the licensing boards and specific issues with HB 1041 as described in detail below. A meeting of stakeholders was held on 1/15/2021; we were not able to discuss many of the concerns due to time constraints. Another meeting will be scheduled in the upcoming week.

When introduced, HB 1041 will be heard by the House Health and Human Services Committee. A listing of the committee members and their hearing schedule is available at:

<https://sdlegislature.gov/Session/Committee/487/Detail>

Overreaching concerns re: HB 1041

Content of the proposed legislation: While the intent of HB 1041 is to combining boards only, and not address content of the practice acts, it is not possible to combine legislation for four professions into one act without changes to the statutes. Current statutes contain language that is no longer accurately reflects scope of practice (e.g., omission of balance disorders in audiology scope of practice). Inconsistencies in licensure renewal periods and licensure fees must be aligned across the professions. While professionals can practice under the current statutes, any new legislation passed should reflect current regulations and practice patterns. Passing a bill one year with outdated language, then returning

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to the legislature the following year will utilize increased time and money from the Department of Health, the licensing boards, practitioners, the public, and legislators as we spend two years addressing licensing standards that could be addressed in one legislative effort.

Timing of introduction of the legislation. SDSLHA and the licensure boards first received the draft legislation in mid-November 2020. Audiologists, speech-language pathologists, and speech-language pathology assistants in all practice settings in SD are currently dealing with the impact of COVID. The pandemic has caused significant stress in the form of daily modifications to service delivery modes and procedures to ensure safety while maintaining the highest level of care for consumers, increased workload as patients and clients present with communication and related disorders due to COVID, financial impact due to shutdowns early in the pandemic and continued consumer hesitancy to access services due to COVID, and challenges balancing family and work responsibilities in the face of illness, school closings, and the like. This has left little time for professionals to compare current statutes to the lengthy bill to combine boards and to understand the potential impact of the bill on their future practice and the public good.

Impact of legislation on board resources. Revision of statutes for the licensing of the professions requires that a new board be formed, and that board write new administrative rules. This is a time-consuming effort, undertaken by board members, practitioners, and members of the public. The costs of this task in terms of payment to licensing board staff and board members, and time away from clinical care services for the public will be significant.

Impact of discrepant number of professionals in the 4 professions regulated by a combined board. There are approximately 650 individuals licensed as SLPs and SLPAs compared to approximately 150 individuals licensed as audiologists and hearing aid dispensers in SD. There is a potential for the work of the combined licensure board to impact the professions more significantly with smaller numbers. Concerns include the potential need for audiology and hearing aid dispenser board members to address an increased number of complaints for the larger professions of SLP and SLPA. This is not in the public's best interest for protection with respect to the professional time it could require of the audiology, hearing aid dispenser, and public members of the licensure board.

Potential for increased practitioner and consumer confusion understanding legislation that addresses multiple professions. The professions of audiology and speech-language pathology are becoming increasingly more specialized with the inclusion of dysphagia in speech-language pathology practice and balance disorders in audiology practice. HB 1041 includes 44 sections of statutes, compared to 24 sections in existing speech-language pathology statutes. The lengthier bill will increase the difficulty professionals and consumers attempt to determine what the law says regarding their responsibilities and rights.

SDSLHA representatives and members of the two licensure boards met to discuss HB 1041 on 01/15/2021. Based on the results of that meeting, the following information is provided to SDSLHA members for consideration:

Issue: Section 36-39-1 Definitions.

SDSLHA Input – Language does not reflect current practice and omits key components of current statutes.

(3), (5) - Add “balance” to definitions that address the practice of audiology.

Rationale: Reflect current practice.

(8) – Follow the FDA definition of “hearing aid” and add” brainstem implant, or osseointegrated or bone conduction devices.”

Rationale: Reflect current practice.

(11), line 20 – add “,” after assistant

Rationale: Correct typographical error

(14) – remove definition of “Research”

Rationale: Not in SLP definitions in current legislation and is not needed by audiology.

(16) – add title protection language for speech-language pathology as follows: " A person represents oneself to be a speech-language pathologist or speech-language pathology assistant if the person holds himself or herself out to the public by any means, or by any service or function performed, directly or indirectly, or by using the terms, speech pathologist, speech therapist, speech teacher, speech correctionist, speech clinician, language therapist, language pathologist, language specialist, voice therapist, voice pathologist, logopedist, communicologist, aphasiologist, phoniatriest, speech-language pathologist assistant, or any variation, synonym, coinage, or other word that expresses, employs, or implies these terms, names, or functions."

Rationale: Title protection language is included in the definition of audiologist in definition (1) in HB 1041. SLP title protection language in current statute 36-37-3 has not been included in HB 1041.

DOH Response: Purpose of legislation is to combine boards, not update language. Speech-language pathology title protection language was not addressed due to time constraints.

Issue: Section 36-39-2. Board of Speech-Language Pathology, Audiology, and Hearing Aid Dispensing

SDSLHA Input – Change board membership to include 2 audiologists, 3 speech-language pathologists, 1 hearing aid dispenser, and 1 member of the public.

Rationale: Proposed board of 2 audiologists, 2 hearing aid dispensers, 2 speech-language pathologists, and 1 member of the public provides unbalance representation of hearing professionals compared to speech-language pathology professionals. Based on number of licensed professionals in SD, the board membership suggested by SDSLHA would more equitably represent the make-up of the professions regulated by the board.

DOH Response: Agreed to proposed change in board membership to 2 audiologists, 3 speech-language pathologists, 1 hearing aid dispenser, and 1 member of the public and remove requirements for specific employment settings for speech-language pathology board members.

Issue: Section 36-39-8. (10) (i) (j) Board—Powers and duties. Section 36-39-35. Fees.

SDSLHA Input: Differences exist in licensure terms (annual for hearing aid dispensers and audiologist vs. biennial for speech-language pathologists and speech-language pathology assistants).

Rationale: Professionals in all 3 disciplines will resist change licensure renewal terms. Moving speech-language pathology professionals to an annual renewal will result in increased paperwork and documentation for the board and the professionals. Moving audiologists and hearing aid dispensers to a biennial license will result in a much higher renewal fee that may be cost-prohibitive for hearing aid dispensers.

DOH Response: Continue this conversation due to time constraints. Need to have consistency in licensure terms.

SDSLHA Input: Proposed maximum fees for application, license, and renewal in HB 1041 are different than current fees.

| | Application | Licensure | Renewal | Late fee |
|---|---|------------------------------------|---|---|
| Audiologist (36-24-21.1 & Forms) | As set by board (no maximum in statute or rule) | </= \$350 | As set by board (no maximum in statute or rule) | As set by board (no maximum in statute or rule) |
| New Audiologist HB 1041 | </= \$350 | </= \$350 Provisional </= \$150 | Annual </= \$350 | </= \$100 |
| Hearing Aid Dispenser | As set by board (no maximum in statute or rule) | </= \$350 | As set by board (no maximum in statute or rule) | As set by board (no maximum in statute or rule) |
| Hearing Aid Dispenser HB 1041 | </= \$350 Application by endorsement </= \$350 | </= \$350 Provisional </= \$150 | Annual </= \$350 | </= \$100 |
| Speech-Language Pathologist & Assistant (Rules 20:79:01, 20:79:03, 20:79:04) | \$100 | SLP \$150 SLPA \$100 | Biennial SLP \$150 Biennial SLPA \$100 | \$50 |
| Speech-Language Pathologist & Assistant HB 1041 | </= \$150 | </= \$150 | Annual </= \$150 SLP & SLPA | \$100 |

Rationale: Current SLP and SLPA licensure renewal term is Biennial. HB 1041 allows a potential doubling – tripling of the licensure renewal fee for SLP and SLPA licensure and renewal, depending on the rules promulgated by the new licensing board. More discussion is needed to ensure that the fee structure is fair and consistent.

DOH Response: Issue was not addressed in discussions due to time constraints.

Issue: Section 36-39-10(3). Speech-language pathologist – License eligibility. Section 36-39-18(2)(3). Audiologist – License eligibility.

SDSLHA Input: requirement that the applicant possess a degree from an educational institution “that is accredited by the accrediting agency of the American-Speech-Language-Hearing Association” will prohibit graduates of programs that are in candidate status from being granted a license to practice in SD. Recommend replacing this language with "that was awarded accreditation candidate status or is accredited by a national accreditation body in the area in which licensure is sought". Requirement that the audiology degree be from “a regionally accredited educational institution” is outdated.

Rationale: This change will update language to accept graduates of programs from ASHA and AAA accrediting bodies and will ensure that graduates of new programs in the profession will be able to practice in SD.

DOH Response: Additional discussion needed to address language.

Issue: Section 36-39-10(7). Speech-language pathologist – License eligibility. Section 36-39-12(4). Speech-language pathology – Provisional licensure – Practice limited. 36-39-13(6) Speech-language pathology assistant licenses.

SDSLHA Input: (4) Has not committed any act for which disciplinary action may be justified. This is in current statute but is excessively prohibitive. Consider stating, “Has not been convicted or found guilty, and has not entered into an agreed disposition, of a felony related to the practice of speech-language pathology, under applicable state or federal criminal law.”

Rationale: A person who committed an act and completed the required disciplinary action, should not be prohibited from practice without consideration for licensure by the board.

DOH Response: Issue was not addressed in discussions due to time constraints. DOH written input in December indicates this has not been a problem yet.

Issue: Section 36-39-13(5) Speech-language pathology assistant – Licensure. Completes a supervised clinical practicum...

SDSLHA Input: Current statutes/rules, and HB 1041 do not provide guidance for type of experience and amount of supervision. This should be addressed.

Rationale: Discussion is needed. Assistant applicants who are completing clinical practicum on the job are not enrolled in an academic program and are not regulated by the Board. Graduates of Bachelor’s level communication sciences and disorders do not complete coursework addressing speech-language pathology assistant scope of practice and may not have any previous clinical experience, depending on the program attended. Additional guidance for the licensed SLPs who supervise the on the job trained SLPA applicants would ensure that the practicum hours are clinical experience hours (vs. time clocked in at the clinical site) and that a minimum amount (e.g., 50%) of supervision is provided. This guidance will

better protect the public by ensuring that the unlicensed SLPA applicant is supervised at a higher rate than the licensed SLPA and that an adequate amount of clinical experience is obtained prior to licensing.
DOH Response: Purpose of HB 1041 is not to update statute, only to combine boards. Not addressed in meeting.

Issue: Section 36-39-14. Speech-language pathology assistant – Licensure for paraprofessionals certified by Department of Education as of July 1, 2012.

SDSLHA Input: Title of this section in current statute and HB 1041 is inaccurate. Paraprofessionals were not certified by the Department of Education. Consider “Speech language pathology assistant – Licensure for paraprofessionals working under a certified speech-language pathologist as of July 1, 2012.”

Rationale: Changed title would accurately state that the paraprofessional was working under a certified speech-language pathologist’s supervision rather than suggesting the paraprofessional held Department of Education certification.

DOH Response: Agreed to title change.

Issue: 36-39-15. Speech-language pathology assistant - Supervision of by licensed pathologist. Title language correction and amount of experience for supervising SLP.

SDSLHA Input: Add “speech-language” before “pathologist” in section title to be consistent with definitions in 36-39-1(15). Current statutes require the supervising speech-language pathologist to have 3 years of experience. HB 1041 reduces the amount of experience required to 2 years based on input from the SLP licensure board to reduce barriers to finding a supervisor for SLPAs.

Rationale: The reduction in years of experience for the clinical supervisor will be consistent with new ASHA requirements for SLPs supervising SLPAs, which require “a minimum of 9 months of full-time clinical experience after being awarded the CCC-SLP.” <https://www.asha.org/assistants-certification-program/slpa-faqs/#c1>

DOH Response: This change was made by the DOH based on licensure board input.

Issue: 36-39-17. Audiology – Practice described.

SDSLHA Input:

(5) Proposed language “Supervision and conduct of newborn hearing screening programs;” should include “Early Hearing Detection and Intervention”

Rationale: Update scope of practice.

DOH Response: Purpose of HB 1041 is not to update statute, only to combine boards. Not addressed in meeting.

(13) & (14) Can be deleted.

Rationale: Audiology license doesn't permit or exclude professional from participating in research or engaging in education and administration.

DOH Response: Purpose of HB 1041 is not to update statute, only to combine boards. Not addressed in meeting.

Issue: 36-39-18 Audiologist – License eligibility. 36-39-22. Hearing aid dispensing – License requirements.

SDSLHA Input: "Be of good moral character." Consider replacing with, "Has not been convicted or found guilty, and has not entered into an agreed disposition, of a felony related to the practice of audiology, under applicable state or federal criminal law."

Rationale: Who would determine the applicant's moral character? Suggested replacement language would be consistent with that proposed for SLP and SLPA licensure and would not prevent a person who committed an act and completed the required disciplinary action, being considered for licensure by the board.

DOH Response: Purpose of HB 1041 is not to update statute, only to combine boards. Not addressed in meeting.

Issue: 36-39-18 Audiologist – License eligibility.

(4) Supervised graduate professional experience can be removed.

Rationale: Input from audiologists indicates this is no longer necessary.

DOH Response: Purpose of HB 1041 is not to update statute, only to combine boards. Not addressed in meeting.

Issue: 36-39-19 Audiologist license pending approval. 36-39-20

Provisional audiology license – Terms.

SDSLHA Input: Include clause to provide a 90-day grace period for professionals moving to SD with an out-of-state license pending their submitted application that is being processed.

Rationale: Input from audiologists that this would allow professionals to begin practicing immediately based on licensure in another state.

DOH Response: Purpose of HB 1041 is not to update statute, only to combine boards. Not addressed in meeting.

36-39-21. Speech-language pathology and audiology – Student participation.

SDSLHA Input: Section is in current audiology licensure statute, but not current speech-language pathology statute. Language in HB 1041 now includes speech-language pathology and speech-language pathology assistant students. If this is included, it should include all professions as written in HB 1041 Questions need to be addressed re: need for this section at all.

Rationale: There are other possible licensure exceptions such as physicians, federal government employees, occupational hearing conservation technicians, etc. If one is addressed others should also be addressed. Discussion is needed as to whether this section is necessary.

DOH Response: Purpose of HB 1041 is not to update statute, only to combine boards. Not addressed in meeting.

Issue: 36-39-22Hearing aid dispensing – License requirements.

SDSLHA Input: “The applicant may not be the holder of an audiology license.” This needs clarification – does this refer to SD only or may the applicant not hold an audiology license in any state?

Rationale: States differ on licensing for audiologists and dispensing. In some states dispensing is part of the audiologist’s license. In others there are separate licenses required for audiologist practice and for dispensing.

DOH Response: Purpose of HB 1041 is not to update statute, only to combine boards. Not addressed in meeting.

Issue: 36-39-26. Receipt for sale of hearing aid – Contents – Refund – Violation as misdemeanor.

SDSLHA Input: Statute requires refund within 30 days. This is not possible.

Rationale: The state does not work that quickly. Typical payment for the state is 90 days or more. Discussion is needed.

DOH Response: Purpose of HB 1041 is not to update statute, only to combine boards. Not addressed in meeting.

Issue 36-39-27. License required for practice.

SDSLHA Input: Current SLP statute 36-37-3 states that engaging in practice as an SLP or SLPA without a license “is a Class 2 misdemeanor.” This language has been omitted from HB 1041 for practice without a license. Note that the specification of a “Class 2 misdemeanor” is included for violations of 36-39-26 related to hearing aid sales. Consistency is needed.

Rationale: No response. Not addressed in meeting.

Issue: 36-39-30. Expiration of license – Renewal.

SDSLHA Input: Discussion is needed regarding length of licensure period, annual or biennial.

Rationale: Professionals in all 3 disciplines will resist change licensure renewal terms. Moving speech-language pathology professionals to an annual renewal will result in increased paperwork and documentation for the board and the professionals. Moving audiologists and hearing aid dispensers to a

biennial license will result in a much higher renewal fee that may be cost-prohibitive for hearing aid dispensers.

DOH Response: Additional discussion needed regarding licensure terms.

Issue: 36-39-33. Issuance of license to out-of-state licensee.

SDSLHA Input: Language has been changed to include speech-language pathology assistants per early input from SDSLHA to the Department of Health. For SLPAs, some states use different terms (e.g., registration, certification).

Rationale: Inclusion of speech-language pathology assistants in this section promotes consistency across licensed professions regulated by the board. The language in the section ensures that the state where the professional is licensed has standards that are equivalent to SD licensure standards. Discussion is needed to address the differences in terminology for SLPAs who may be registered or certified in other states that have equivalent practice standards to those in SD.

DOH Response: Change was made as suggested by SDSLHA.

Issue: 36-39-36. Posting of certificate of license – Violation a misdemeanor.

SDSLHA Input: This is in current audiologist licensing statutes but is not required for speech-language pathologists. It is a change in speech-language pathologist and assistant requirements. The statute designates a violation as a Class 2 misdemeanor. Many SLPs and SLPAs work in multiple locations (e.g., transient service providers in health care systems and schools). Many SLPs and SLPAs provide services via telepractice, using virtual backgrounds to engage children in therapy. It will not be possible to keep the license displayed in virtual therapy environments.

Rationale: Discussion is needed regarding the necessity of this additional regulation for SLPs and SLPAs and the practicality of displaying the license in multiple sites and virtual clinical settings.

DOH Response: Change was made by DOH in initial draft of HB 1041. Not discussed in meeting.

Issue: 36-39-37. Notice to board of change of name or address.

SDSLHA Input: This is in current audiologist licensing statutes but is not required for speech-language pathologists.

Rationale: SDSLHA does not oppose the requirement; however, it is a change in statutes for SLPs and SLPAs.

DOH Response: Change was made by DOH in initial draft of HB 1041. Not discussed in meeting.

Issue: 36-39-39. Disciplinary action – Grounds.

SDSLHA Input: (13) “Providing services or promoting sales of devices, appliances, or products to a person who cannot reasonable be expected to benefit from such services, devices, appliances, or products.” This is in current statute but needs further discussion.

Rationale: Audiologists may sell hearing aids to people with normal hearing – while controversial, it is supported by research. That is one way that could be defined “not supported by relevant published literature.”

DOH Response: Purpose of HB 1041 is not to update statute, only to combine boards. Not addressed in meeting.

SDSLHA Input: (13) “Diagnosing or treating a person for speech disorders by mail or telephone unless the person has been previously examined by the licensee and the diagnosis or treatment is related to such examination.” This is in current speech-language pathology licensing statute but should be expanded to clarify application to disorders other than “speech disorders” (e.g., audiology services, other communication deficits, dysphagia). Clarification needed to allow telepractice.

Rationale: Discussion is needed to ensure that this requirement is comprehensive enough to ensure protection of the public beyond “speech disorders.”

DOH Response: Purpose of HB 1041 is not to update statute, only to combine boards. Not addressed in meeting.