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REGULATORY BOARD REVIEW

THE BOARD OF HEARING AID DEALERS AND FITTERS

AUDIT OVERVIEW

Licensure of Hearing Aid Dealers Is Needed, But Could Be Administered by the Board of Examiners for Speech-Language Pathology and Audiology.

The Board of Hearing Aid Dealers and Fitters Complies With Some of the General Provisions of Chapter 30 of the W.Va. Code.

The West Virginia Board of Hearing Aid Dealers and Fitters' Website Requires Improvements to Enhance User-Friendliness and Transparency.



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Doug Skaff
Kayla Young



WEST VIRGINIA LEGISLATIVE AUDITOR

PERFORMANCE EVALUATION & RESEARCH DIVISION

Building 1, Room W-314
State Capitol Complex
Charleston, West Virginia 25305
(304) 347-4890

Aaron Allred
Legislative Auditor

John Sylvia
Director

Noah Browning
Research Manager

Brooke Hypes
Research Analyst

Christopher F. Carney
Referencer

WEST VIRGINIA LEGISLATURE
Performance Evaluation and Research Division

Building 1, Room W-314
1900 Kanawha Boulevard, East
Charleston, West Virginia 25305-0610
(304) 347-4890
(304) 347-4939 FAX



John Sylvia
Director

June 6, 2021

The Honorable Mark Maynard
West Virginia State Senate
Building 1, Room 217-W
1900 Kanawha Boulevard, East
Charleston, West Virginia 25305-0470

The Honorable Brandon Steele
West Virginia House of Delegates
Building 1, Room E-213
1900 Kanawha Boulevard, East
Charleston, West Virginia 25305-0470

Dear Chairs:

Pursuant to the West Virginia Performance Review Act, we are transmitting a Regulatory Board Review of the Board of Hearing Aid Dealers and Fitters. The issues covered herein are *“Licensure of Hearing Aid Dealers Is Needed, But Could Be Administered by the Board of Examiners for Speech-Language Pathology and Audiology,”* *“The Board of Hearing Aid Dealers and Fitters Complies With Some of the General Provisions of Chapter 30 of the W.Va. Code,”* and *“The West Virginia Board of Hearing Aid Dealers and Fitters’ Website Requires Improvements to Enhance User-Friendliness and Transparency.”*

We transmitted a draft copy of the report to the Board of Hearing Aid Dealers on April 14, 2021. We held an exit conference on April 30, 2021. We received the agency response on May 17, 2021.

Let me know if you have any questions.

Sincerely,

A handwritten signature in cursive script that reads "John Sylvia".

John Sylvia

CONTENTS

Executive Summary.....	7
Issue 1: Licensure of Hearing Aid Dealers Is Needed, But Could Be Administered by the Board of Examiners of Speech-Language Pathology and Audiology.....	11
Issue 2: The Board of Hearing Aid Dealers and Fitters Complies with Some of the General Provisions of Chapter 30 of the W.Va. Code.....	21
Issue 3: The West Virginia Board of Hearing Aid Dealers and Fitters' Website Requires Improvements to Enhance User-Friendliness and Transparency	41

List of Tables

Table 1: Summary of Board Response Time to Letters.....	24
Table 2: Hearing Aid Dealer Licensure Fees for West Virginia and Surrounding States	27
Table 3: Board of Hearing Aid Dealers and Fitters and Budget Information FY 2016-2020	28
Table 4: Expected and Actual Revenues FY 2016-2020	29
Table 5: Expected and Required Expenditures FY 2016-2020.....	31
Table 6: Cost of Travel to National Conference FY 2016-2020.....	32
Table 7: Average Deposit Time of Board Revenue FY 2016-2020	33
Table 8: Summary of Complaints.....	36
Table 9: West Virginia Board of Hearing Aid Dealers and Fitters Website Evaluation Score	41
Table 10: Board Website Evaluation Score.....	42

List of Appendices

Appendix A: Transmittal Letters.....	47
Appendix B: Objectives, Scope and Methodology	49
Appendix C: Website Criteria Checklist and Points System.....	53
Appendix D: Agency Response.....	57

EXECUTIVE SUMMARY

The Performance Evaluation and Research Division (PERD) within the Office of the Legislative Auditor conducted a Regulatory Board Review of the West Virginia Board of Hearing Aid Dealers and Fitters (Board) pursuant to West Virginia Code §4-10-10(b)(3). Objectives of this audit were to assess the Board's compliance with the general provisions of Chapter 30 and other applicable laws and evaluate the Board's website for user-friendliness and transparency. As part of this review, PERD assessed the continued need for the Board and if conditions have changed sufficiently to warrant consolidation or termination instead of continuation. The issues of this report are highlighted below.

Frequently Used Acronyms in This Report:

PERD – Performance Evaluation and Research Division

FDA – Food and Drug Administration

OTC – over-the-counter

FY – fiscal year(s)

OASIS – Our Advanced Solution with Integrated Systems

ADA – Americans with Disabilities Act

Report Highlights:

Issue 1: Licensure of Hearing Aid Dealers Is Needed, But Could be Administered by the Board of Examiners for Speech-Language Pathology and Audiology.

- Federal hearing aid regulations are easing.
- A recently created federal category for over-the-counter hearing aids is expected to change the hearing aid market and impact current state regulations.
- The Board is inaccessible and provides limited public protection.
- Other agencies exercise regulatory authority over hearing aid dealers.
- Audiology, speech-language pathology, and hearing aid dealing and fitting are sufficiently related to have under the purview of a single regulatory body.

Issue 2: The Board of Hearing Aid Dealers and Fitters Complies With Some of the General Provisions of Chapter 30 of the W.Va. Code.

- The Board is financially self-sufficient but has a declining cash-balance.
- The Board has only one part-time staff member and cannot adequately segregate duties, nor does it utilize online payments to reduce the risk of fraud.
- The Board's financial recordkeeping practices are inadequate. The records provided by the Board were insufficient to determine the likelihood fraud occurred.
- The Board does not utilize a complaints process that ensures due process for licensees.
- The Board does not have the statutorily required lay member.

Issue 3: The West Virginia Board of Hearing Aid Dealers and Fitters' Website Requires Improvements to Enhance User-Friendliness and Transparency.

- The Board's website needs additional features and content to enhance user-friendliness and transparency.
- There is a need for state government website standardization.

PERD Response to Agency Response

On May 17, 2021, PERD received a written response from the agency administrator of the Board of Hearing Aid Dealers and Fitters via email, which can be found in Appendix C. It should be noted that, after an exit conference with the administrator on Friday, April 30, 2021, PERD revised the original draft in response to documentation the agency provided after the exit conference, which had not been provided to PERD by the agency during the audit. Overall, the Board indicated that it is committed to correcting valid deficiencies identified by the recommendations of the report. Importantly, the Board did not address the Legislative Auditor's recommendation for termination and combining with the Board of Speech-Language Pathologists and Audiologists. Below is PERD's response to some of the Board's responses to the report.

Agency Response: *"The Board would like to note that this audit was interrupted by a global pandemic. We are sorry that the auditor's office felt that we were inaccessible during this time. The building the board's office is located [sic] was closed to the public for 3 weeks and the agency administrator began working from home."*

PERD Response: PERD acknowledges that the pandemic created logistical issues for the Board and all government agencies but maintaining operations in times of disaster is an essential part of being a reliable public institution. Many other agencies continued operations, as did PERD. Moreover, the Board later provided documentation of a letter it sent to a licensee on April 23, 2020, during the period it was inaccessible to the audit team. The pattern of requiring extensions and delayed communications started before the pandemic, continued throughout it, and occurred during the exit process as well. The Board's inaccessibility is not entirely attributable to the pandemic.

Agency Response: *"The board will make every effort to see that the meeting minutes contain information about the recusal of a board member; additionally the agency administrator will now proof read [sic] all minutes to make sure necessary information is included in the minutes."*

PERD Response: The board member in question must recuse herself from any complaint involving her business. Additionally, the Board should exercise caution in the topics it discusses during its meeting and ensure they are both on the record and in compliance with the requirements of W. Va. Code.

Agency Response: Regarding the statement that the Office of the Attorney General receives and resolves more complaints concerning hearing aids than the Board, the administrator stated in the response that *"This is not due to the Board being inaccessible. The complaints filed were consumer protection issues that the Attorney General's office resolves."*

PERD Response: As noted above, it is PERD's assertion that the Board is inaccessible, as the audit team was unable to contact the administrator and receive timely responses. However, the intent of this section of the report is to highlight that there is also regulatory overlap, and the Attorney General is the route by which most consumers seek restitution and thus, elimination of the Board would likely have minimal impact on

consumers. This was also noted in prior PERD reports. Moreover, the Board does not provide an online complaint form, meaning any member of the public filing a complaint would have to contact the Board to do so and the Legislative Auditor is concerned this is a deterrent and exacerbated by the Board's inaccessibility.

Agency Response: Regarding PERD's finding that meeting minutes contain off-record discussion about coordinating with outside entities for lobbying efforts, the administrator stated: *"The board secretary records the minutes, but the administrator will proof read [sic] the minutes and make edits so that they are accurate before being made public."*

PERD Response: PERD agrees that reviewing minutes is a practice the Board should adopt. However, the Board should not have an off-record conversation in a public meeting unless it is a subject to be discussed in executive session. The issue is not only the appearance of "off-record" in the meeting minutes, but the intent to discuss lobbying off the record during a public meeting as boards are prohibited from employing or contracting with any entity for lobbying on behalf of a board and this appears to be a blatant attempt to circumvent W. Va. Code.

Agency Response: *"The Board would like to note that it now pays insurance premiums to BRIM. This is a relatively new expense for the board and has a total annual cost of \$2785. The Board feels that this is a contributor to the decline in the ending cash balance."*

PERD Response: As the Board notes, this is a relatively new expense. However, it alone does not explain the longer pattern of its declining cash balance as the Board incurred deficit spending each year from FY 2016 through FY 2020. In addition, the Board's statement that BRIM premiums are new expense underscores PERD's concern that an unexpected or emergency situation could result in insufficient funds to pay all obligations.

Recommendations

1. *The Legislature should review current state hearing aid law for conformity with the Food and Drug Administration Reauthorization Act of 2017 once the final regulations are published.*
2. *The Legislature should consider adding an exemption for audiologists from licensing to W.Va. Code §30-26 to ensure it is clear licensed audiologists are permitted to deal hearing aids without a hearing aid dealer license.*
3. *The Legislature should consider merging the Board of Hearing Aid Dealers and Fitters with the West Virginia Board of Examiners for Speech-Language Pathology and Audiology.*
4. *The Legislature should consider the creation of a multi-professional licensing agency. The Board should explore alternate sources of revenue, such as currently unlicensed businesses, to address its declining cash balance.*
5. *The Board review the documents on its website and correct any errors.*
6. *The Board reduce the handling of revenue through encouraging online renewal payments and utilizing West Virginia Treasurer's Office Lockbox system.*
7. *The Board review its current rules for accuracy and update inaccurate provisions. The Legislature should consider establishing a central standard for board website design.*

8. *The Board consider improving its website to provide a better online experience for the public.*
9. *The Board should review the information on its website for accuracy and accessibility.*
10. *The Board should consider improving its website to provide a better online experience for the public.*
11. *The Board should review the information on its website for accuracy and accessibility.*

ISSUE 1

Licensure of Hearing Aid Dealers Is Needed, But Could Be Administered by the Board of Examiners for Speech-Language Pathology and Audiology.

Issue Summary

Once the Performance Evaluation and Research Division (PERD) has determined the need for a board, PERD does not routinely revisit that decision unless conditions have changed significantly to warrant an increase, decrease or termination of regulation. In 2009, PERD reported the continued need for the licensure of hearing aid dealers. PERD found most of the harm or risk to the public posed by incompetent dealers is monetary loss. While this and other risks still exist, the findings of this review give cause to consider transferring the Board's regulatory duties to the Speech-Language Pathology and Audiology Board (Speech-Audiology Board). This conclusion is based on the following:

- Federal regulations regarding hearing aids are easing.
- The Board is inaccessible.
- The Board's regulatory function overlaps with that of other entities, namely the Office of the Attorney General and Board of Speech-Language Pathology and Audiology.

The findings of this review give cause to consider transferring the Board's regulatory duties to the Speech-Language Pathology and Audiology Board.

In 2009, PERD Found Regulation of Hearing Aid Dealers and Fitters Was Necessary.

As noted in 2009, regulation of a profession by a board assures the public that members of that profession have met minimum competency standards to qualify for practice. In evaluating the need for regulation of a profession, PERD evaluates if the unregulated profession clearly endangers the health, safety, or welfare of the public and whether the practice requires specialized skill or training. Furthermore, PERD considers the cost-effectiveness of the manner of regulation.

In 2009, PERD found most of the risk to the public posed by incompetent hearing aid dealers was monetary loss. While the practice of hearing aid dealing and fitting requires specialized knowledge of human hearing and technology, the Board only had two complaints between FY 2017 and 2019 and both complaints concerned issues regarding the sale of the hearing aid and not the act of fitting itself.

However, consideration should be given to the extent of financial harm potentially caused by unscrupulous dealers. In 2015, the President's Council of Advisors on Science and Technology noted, "*Most people pay for hearing aids completely out of pocket since traditional Medicare and most private insurance plans do not cover the cost of hearing aids*

In 2009, PERD found most of the risk to the public posed by incompetent hearing aid dealers was monetary loss.

or their fitting.” The Council referenced a 2014 survey that found the average cost of a single hearing aid was \$2,363, with premium models costing more on average. Furthermore, many individuals need two hearing aids (one for each ear), which doubles the cost.

Given the technical knowledge required to fit hearing aids, and the high cost of the products hearing aid dealers dispense, continued regulation of this profession is justified. It should be emphasized that dealers may have a high rate of interaction with hearing-impaired senior citizens who may be more vulnerable to dishonest sales practices. This is of particular concern given the relatively high price of the custom-fitted hearing aids dealers sell. However, a board dedicated to regulating this profession alone is not necessary, and regulatory duties could be transferred to another entity, specifically the Speech-Audiology Board.

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Recent Federal Legislation Established a Category for Over-the-Counter Hearing Aids.

In the Food and Drug Administration (FDA) Reauthorization Act of 2017 (Reauthorization Act), Congress provided for the establishment of a category for over-the-counter (OTC) hearing aids. The creation of this category has in part been driven by the high cost of hearing aids, which is caused by current market conditions and practices. Limited competition and the practice of bundling contribute to the high price of most hearing aids.¹ Six hearing-aid manufacturing companies accounted for 98 percent of the global market in 2012. Technology accounts for a relatively small portion of the total bundled price. Instead, many consumers pay for services they do not use that are included in the bundled price. Bundling also restricts the consumer’s ability to change hearing-healthcare professionals.

Section 709 of the Reauthorization Act defines requirements for OTC hearing aids.² Hearing aids remain restricted devices until the effective date of the final, published regulation and hearing aid sales must continue to follow state and federal requirements. While the final regulations for OTC hearing aids have not yet been published, the Reauthorization Act itself addresses the issue of potential conflicts with state law. Specifically, state law cannot restrict the sale of OTC hearing aids. **The Reauthorization Act prohibits the enactment or continuation of state law that conflicts with regulations of OTC hearing aids or imposes more stringent requirements on the sale of**

A board dedicated to regulating this profession alone is not necessary, and regulatory duties could be transferred to another entity, specifically the Speech-Audiology Board.

¹ “Bundling” refers to the practice of charging a single fee for both the hearing-aid device and professional services, such as the initial evaluation and initial post-sale adjustments.

² Section 709 is not self-implementing. Consequently, the OTC hearing aid category within the meaning of the Reauthorization Act does not exist until the effective date of the final, published regulation.

these devices. Moreover, the Reauthorization Act explicitly states that state laws requiring the involvement of a licensed person in the sale of OTC hearing aids would conflict with the Reauthorization Act. Current state hearing aid laws will need to be reviewed for conformity with the requirements of the Reauthorization Act and the final regulations decided upon by the FDA.

The Hearing Aid Industry Is Fundamentally Changing In Response to Easing Federal Regulations.

The hearing aid market is fundamentally changing due to changes in federal law. As discussed above, this has culminated in the establishment of a category for OTC hearing aids, but the Reauthorization Act reflects a longer pattern of easing regulations. While many regulations governing hearing aids pertain to manufacturing requirements that would not impact a dealer's day-to-day practice, others directly impact the sale of hearing aids and therefore the practice of this profession. For example, a hearing aid dispenser should advise a prospective purchaser to consult with a licensed physician before proceeding with the sale if this requirement has not already been fulfilled. The Code of Federal Regulations §801.421 allows a fully capable adult to waive physician consultation once advised it is not in his or her best health interest, and then the sale may proceed without physician involvement.

Both state and federal regulations can create barriers that make hearing aids inaccessible to many who would benefit from them.

However, while this remains in regulation, the FDA released a guidance document in 2016 stating it does not intend to enforce its medical evaluation requirement for adults. The FDA acknowledged that this requirement created a potential barrier to access since only a small percentage of people who could benefit from use of a hearing aid seek hearing care. The original purpose of the medical evaluation requirement was to ensure those with medically or surgically treatable conditions were identified before purchasing a hearing aid that may not be beneficial, although such conditions only cause a small portion of hearing loss cases.

In a 2015 letter, the President's Council of Advisors on Science and Technology came to a similar conclusion: both state and federal regulations can create barriers that make hearing aids inaccessible to many who would benefit from them. The Council concluded that well-intentioned requirements such as requiring or recommending medical evaluation may do more harm than good, as the benefit of identifying medical conditions resulting from recommended evaluations must be weighed against the cost of the barriers created by the requirement. For example, despite the prevalence of glaucoma and cataracts in the population, reading glasses are sold over-the-counter; while these conditions require treatment from a medical professional, this has not prevented the marketing of OTC glasses to those for whom they would be sufficient. In cases of sudden or unusual events or symptoms, patients are generally entrusted with seeking medical care.

Furthermore, the technology currently used in hearing aids is also used in widely available devices purchasable without involvement of a healthcare professional. Hearing aids resemble personal sound amplification products (PSAPs); both are wearable devices that amplify sound. These products differ in their purpose: hearing aids are intended to compensate for a hearing impairment, whereas PSAPs are intended for non-hearing-impaired individuals, often for recreational purposes. While hearing aids and PSAPs can be similar in function, the difference in intended purpose makes hearing aids subject to more stringent regulations, with specific labeling and sale requirements. This distinction is based on intended use rather than performance. Both state and federal law make this purpose-based distinction. The definitions below both emphasize hearing aids are not solely defined by the technology they incorporate, but their intent to compensate for impaired hearing.

The Code of Federal Regulations §801.420 defines a “hearing aid” as follows:

“Hearing aid means any wearable instrument or device designed for, offered for the purpose of, or represented as aiding persons with compensation for, impaired hearing (emphasis added).”

West Virginia Code §30-26-1(4) provides a similar definition:

“‘Hearing aid’ means any wearable device or instrument or any combination thereof, designed for, represented as or offered for sale for the purpose of aiding, improving or compensating for defective or impaired human hearing and shall include earmolds, parts, attachments or other accessories thereto, but excluding batteries and cords (emphasis added).”

While PSAPs and hearing aids are not equivalent devices and can differ in performance, design, and purpose, PSAPs represent a class of hearing-amplification products currently subject to less stringent regulation. The emphasis of the intent to treat disease in hearing aid definitions and the wide availability of PSAPs indicate restriction of hearing aid sales is not based on the design of a hearing-amplification device. Regulation of hearing aid sales can provide an element of consumer protection, particularly considering the high cost of most current hearing aids, but easing federal regulations, the availability of PSAPs, and the pending OTC hearing aid category indicate hearing-amplification devices are not considered inherently risky to public health and safety.

While there will likely be a continued need for custom-fitted hearing aids and therefore, hearing aid dealers and fitters, the future availability of less costly OTC hearing aids may decrease demand for

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the custom hearing aids currently available. OTC hearing aids are not expected to correct hearing impairment as well as a custom hearing aid (much as reading glasses may not be as effective as prescription glasses), but they may be sufficient for people with certain types of hearing loss and an attractive alternative if the price is significantly lower, as is anticipated. People with certain hearing impairments will continue to need a hearing aid fitter but changes in regulations and OTC hearing aids may lead to fewer people needing to consult a hearing professional to obtain a sufficient hearing aid.

Given the changes occurring in the hearing aid industry and the current state of the Board, the Legislature should consider terminating the Board and transferring its licensing function to the Speech-Audiology Board. If the need for hearing aid dealers declines, then the profession may no longer be able to support a self-sustaining board. Moreover, if the profession shrinks, the need for the Board to regulate a small number of hearing professionals will be questionable. Transferring the licensure function to the Speech-Audiology Board would maintain the current level of protection provided by licensure, address the administrative issues described below, and allow for more efficient regulation of hearing aid sales.

Given the changes occurring in the hearing aid industry and the current state of the Board, the Legislature should consider terminating the Board and transferring its licensing function to the Speech-Audiology Board.

The Board Does Not Adequately Protect the Public.

The audit team noted numerous administrative issues, including conflicting documentation and missing records. Of equal concern is the lack of public access to the Board. As described in Issue 2, the Board is not accessible to the public. The audit team reached this conclusion based on its own experiences communicating with the Board, meeting minutes, and postings on the Secretary of State's website. The Legislative Auditor is concerned that, if the Board is inaccessible to legislative staff, it is inaccessible to the public as well. A Board's primary responsibility is to protect the public from harm potentially caused by the profession it regulates. The Board cannot fulfill its duty to protect the public if it is inaccessible. For more information on the identified accessibility problems, please refer to page 11. Given its administrative issues and inaccessibility, the Legislative Auditor is concerned the current Board does not protect the public. **Because of these issues and changing federal regulations, the Legislature should consider transferring the Board's regulatory duties to another appropriate entity such as the Speech-Audiology Board.**

The Legislative Auditor is concerned that, if the Board is inaccessible to legislative staff, it is inaccessible to the public as well.

Additionally, the audit team identified that the board chair's business employs more licensees than any other business in West Virginia. Approximately 25% of all licensees work for this franchise, and the chair owns most of the offices in the state. While the agency administrator stated the chair recuses herself from any complaint involving her corporation,

the audit team did not find record of any such recusal in the file of the complaint against the board chair's business or in meeting minutes. This issue is compounded by the Board's lack of the statutorily required lay member, limited public accessibility, and limited interaction with the public.

The Board Does Not License All Hearing Aid Businesses as Required by Law.

The audit team did not perform a full or detailed review of hearing aid businesses in West Virginia. However, the audit team identified two hearing aid businesses in the Charleston area that are not included in the list of business licensees provided by the Board. Both locations are within five miles of the Board's current office.

While audiologists do not require a personal license from the Board of Hearing Aid Dealers to dispense hearing aids, hearing aid businesses do. Hearing aid businesses can be staffed by audiologists not licensed by the Board, but the Attorney General's Office previously required a dispensing audiologist to license his corporation with the Board to resolve a consumer complaint filed with the Attorney General's office. The Board was provided with information on this complaint and its outcome. In fact, in meeting minutes from November 30, 2018, the Board acknowledged, "A.G. [Attorney General] determined that his corporation needed to be licensed...[Administrator and Board member] will work on letter [sic] to send all dispensing audiologists regarding this issue. We may need to change language in law to clarify anyone dispensing (audiologists) will need a license or corporation license." The audit team did not receive a copy of the referenced letter, nor did the issue reappear in later meeting minutes.

The Legislative Auditor is concerned the Board may not be licensing all the businesses it is responsible for regulating.

While the audit team did not systematically compile a list of hearing aid businesses³ to compare to the licensee list the Board provided or determine the extent of unlicensed businesses, the Legislative Auditor is concerned the Board may not be licensing all the businesses it is responsible for regulating. If harm is occurring because of these unlicensed businesses, then the Board is not taking proper steps to prevent it. If no harm is occurring, despite the presence of unlicensed businesses, the Legislative Auditor questions the need for licensing these

³ *The time and resources required for the audit team to gather this information was prohibitive. While databases listing business organizations exist (such as those maintained by the Secretary of State and Tax Department) establishing a unique identifier(s) to generate a complete list of business entities dispensing hearing aids that the Board should license is more complex. Moreover, the Board does not maintain a complete list of entities dispensing hearings or an accurate list of those it does license. Therefore, the audit team could not reasonably develop of list of entities statewide for comparison to the Board's list of licensed businesses in order to determine the number of unlicensed operations.*

businesses. **The Legislative Auditor recommends the Board, or its successor, create a complete list of hearing aid businesses and license them appropriately.** Collaboration with the Board of Speech-Language Pathology and Audiology may help ensure licensing requirements for dispensing businesses are clearly communicated and consistent.

The Office of the Attorney General Receives and Resolves More Complaints Concerning Hearing Aids than the Board.

The Board is authorized to take complaints and impose disciplinary action against individuals who violate terms of licensure. Despite this disciplinary authority, the Office of the Attorney General can also address complaints within the Board’s purview.

The Attorney General’s Office receives and resolves significantly more complaints against hearing aid dealers than the Board. The Attorney General’s Office received 14 complaints against hearing aid dealers in fiscal years 2017 through 2019. During the same period, the Board handled two complaints, neither of which was received from the general public. One complaint was originally submitted to the Attorney General’s Office, which then forwarded the complaint to the Board. The second complaint was submitted by the Speech-Audiology Board and pertained to improper use of the term “audiologist” by a licensee of the Board. The Board was made aware of a third complaint, but the Attorney General’s Office investigated and resolved it. The Board was asked to not involve itself until the Attorney General’s Office resolved the case and was instructed not to have contact with the respondent.

The Attorney General has handled most complaints against hearing aid dealers for several years. In fact, this pattern was noted in PERD’s 2009 report on the Board as well. In fiscal years 2006 through 2009, the Attorney General’s Office resolved 51 complaints against hearing aid dealers while the Board had only one. At the time, this was attributed to a section on the Attorney General’s website (since removed) about hearing aid dealers and limited board access. The Legislative Auditor concludes that, given that the Attorney General handles most complaints against hearing aid dealers and fitters, dissolution of the Board would likely have minimal impact on the public’s ability to rectify complaints against the Board’s licensees.

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The Attorney General has handled most complaints against hearing aid dealers for several years.

The Board of Hearing Aid Dealers and Fitters Could Be Dissolved and Its Regulatory Functions Transferred to the Board of Examiners for Speech-Language Pathology.

Given similarities between the practice of audiology and hearing aid dealing and the Board's relatively small size, transferring the Board's regulatory function to the West Virginia Speech-Audiology Board would be feasible. Both hearing aid specialists and audiologists are hearing healthcare professionals, and speech-language pathology is often aligned with audiology. These professions are sufficiently related to regulate under a single board. Even audiologists who function as hearing aid dealers are regulated solely by the Speech-Audiology Board and not the Board of Hearing Aid Dealers. **Maintaining a separate board for hearing aid dealers is not necessary.**

Few states utilize a fully autonomous, self-supporting board to regulate hearing aid dealers as is used in West Virginia. Only Alabama, Kansas, North Carolina, and North Dakota utilize an autonomous board dedicated to the profession similar to the Board of Hearing Aid Dealers and Fitters. Several states that maintain a separate board for hearing aid dealers support the board with a professional licensing office. Boards and professional licensing offices are often housed within relevant departments, including departments dedicated to occupational regulation and licensing. Other departments used include health, administration, labor, and state. However, the precise arrangement varies by state. Approximately 13 states regulate hearing aid dealers under the same board as related professions, usually audiology and/or speech-language pathology (although Virginia regulates hearing aid dealers and optometrists under the same board). These speech-hearing professional boards can be autonomous, although they are often supported by professional licensing offices or an agency.

Moreover, licensed audiologists in West Virginia are already permitted to practice dealing and fitting hearing aids without obtaining a separate license from the Board. West Virginia Code §30-32-14(b) specifically exempts audiologists from licensure requirements established by the Board. In fact, the scope of practice established by W.Va. Code §30-32-14 specifically states that “*selecting, fitting, programming and dispensing of amplification, assistive listening and alerting devices and programming and other systems (e.g., implantative devices) and providing training in their use*” is a function an audiologist may perform. The Board also permits licensed audiologists to supervise trainees in the process of becoming hearing aid dealers, without being licensed hearing aid dealers themselves. Rather than having two separate bodies overseeing the practice of dealing hearing aids, one board could be responsible for regulating both hearing aid dealers and audiologists, which could promote clarity, consistency, and efficiency in regulation.⁴

⁴While both boards have provisions against dealers falsely representing themselves as audiologists, enforcement could be simplified by having a single body responsible for both hearing aid dealers and audiologists.

Given similarities between the practice of audiology and hearing aid dealing and the Board's relatively small size, transferring the Board's regulatory function to the West Virginia Speech-Audiology Board would be feasible.

Rather than having two separate bodies overseeing the practice of dealing hearing aids, one board could be responsible for regulating both hearing aid dealers and audiologists.

Although audiologists can perform the same work as hearing aid dealers, fitting and dispensing hearing aids represents only a small portion of the practice of audiology. However, given that audiologists can perform similar work as hearing aid dealers, dissolving the Board and transferring the licensees to the Speech-Audiology Board would likely have limited impact on licensees and add minimal work to the Speech-Audiology Board staff. In fiscal year 2019, the Speech-Audiology Board oversaw approximately 1,123 total licensees and registrants, while the Board of Hearing Aid Dealers currently has approximately 131 licensees, including trainees and businesses.⁵ Moreover, dissolution of the Board would significantly reduce several expenses, such as rent and utilities, while likely increasing accessibility to the public. A hearing aid dealer member(s) could be added to the Speech-Audiology Board to provide the profession with proper representation.

The Legislative Auditor determines that maintaining a separate board for hearing aid dealers is not needed. In addition to potentially saving costs associated with separate staff and rent, combining the Board with the Speech-Audiology Board may improve regulatory enforcement and accessibility. **The Legislative Auditor recommends considering dissolution of the Board of Hearing Aid Dealers and Fitters and transfer of its duties to the Speech-Audiology Board.**

Should the Legislature Choose to Continue the Board, It Could Benefit From the Creation of a Multi-Professional Licensing Agency.

The Legislative Auditor recommends merging the Board with the Speech-Audiology Board regardless, but should the Legislature choose to continue the Board, it and other small boards could benefit from being placed within an umbrella board or multi-professional licensing agency. This would allow small boards to share resources beyond what is currently possible with Memorandums of Understanding. In 2019 in its Board of Acupuncture report, PERD recommended the creation of a multi-professional licensing agency, identifying at least 20 regulatory boards (including the Board of Hearing Aid Dealers and Fitters) with three or fewer employees that could benefit from consolidation.

Conclusion

The practice of hearing aid dealing and fitting has the potential to harm the public if unregulated; licensure is still necessary. However, the hearing aid industry is expected to change in ways that could fundamentally change the role of the hearing aid dealer profession,

⁵ *The records provided by the Board are such that the audit team could not determine a definitive count of licensees. This number represents a simple count of names listed in Board-provided spreadsheets listing licensees by category in multiple files. Expiration dates and current statuses varied.*

Moreover, dissolution of the Board would significantly reduce several expenses, such as rent and utilities, while likely increasing accessibility to the public.

The Legislative Auditor recommends considering dissolution of the Board of Hearing Aid Dealers and Fitters and transfer of its duties to the Speech-Audiology Board.

justifying reconsideration of current regulations. Given the Board's current administrative issues and regulatory overlap with the Office of the Attorney General and the Speech-Audiology Board, the Legislative Auditor questions the continued need for a board dedicated to regulating hearing aid dealers and fitters. The Legislative Auditor recommends transferring the Board's regulatory duties to the Speech-Audiology Board and terminating the Board of Hearing Aid Dealers and Fitters. These professions are sufficiently related to have under the purview of a single entity, as is done in several other states. Transferring the Board's regulatory duties to the Speech-Audiology Board would reduce expenses associated with multiple boards sharing costs, address the Board's current accessibility issues, and promote consistent regulation of hearing professionals and businesses.

Recommendations

1. *The Legislature should review current state hearing aid law for conformity with the Food and Drug Administration Reauthorization Act of 2017 once the final regulations are published.*
2. *The Legislature should consider adding an exemption for audiologists from licensing to W.Va. Code §30-26 to ensure it is clear licensed audiologists are permitted to deal hearing aids without a hearing aid dealer license.*
3. *The Legislature should consider terminating the Board of Hearing Aid Dealers and Fitters and transferring its regulatory responsibilities to the Speech-Audiology Board.*
4. *The Legislature should consider the creation of a multi-professional licensing agency.*

Transferring the Board's regulatory duties to the Speech-Audiology Board would reduce expenses associated with multiple boards sharing costs, address the Board's current accessibility issues, and promote consistent regulation of hearing professionals and businesses.

ISSUE 2

The Board of Hearing Aid Dealers and Fitters Complies With Some of the General Provisions of Chapter 30 of the W.Va. Code.

Issue Summary

The Board of Hearing Aid Dealers and Fitters is not accessible to the public, maintains inadequate financial records, and does not comply with complaint procedures. Although the Board is currently financially self-sufficient, its end-of-year cash balance has been steadily declining over the past five years, and at its current spending rate, the Board will be in a financially precarious position. With only one part-time staff member, the Board cannot adequately segregate duties. As a result, the Board has internal control deficiencies. The Board does not utilize the West Virginia Treasurer's electronic payment system; therefore, licensees pay fees by check. The agency administrator has attended the State Auditor's annual seminar for licensing boards since 2014. However, the board chair has not attended the seminar since 2014 and one board member has never attended a seminar. Each board member is required to attend once in each term of office, which lasts four years.

While the Board technically complies with some of these provisions, the Legislative Auditor has concerns about the manner of compliance discussed in more detail within this issue.

The Board Complies With Some of the General Provisions of Chapter 30 and Other Applicable Provisions of West Virginia Code.

The Board complies with some of the general provisions of Chapter 30 of *West Virginia Code*. These provisions are for the proper operation of regulatory boards. The Board complies with the following provisions:

- The Board has adopted an official seal (§30-1-4).
- The Board meets at least once annually (§30-1-5(a)).
- The Board is financially self-sufficient in carrying out its responsibilities ((§30-1-6(c)).
- The Board has promulgated rules specifying the investigation and resolution procedure of all complaints (§30-1-8(k)).
- The Board members have taken the oath as prescribed by Section 5 of Article 4 of the State Constitution before exercising the authority or duties of the office.

While the Board technically complies with some of these provisions, the Legislative Auditor has concerns about the manner of compliance discussed in more detail within this issue. Specifically, the Legislative Auditor has concerns about meeting accessibility, financial self-sufficiency, and compliance with the complaint rules the Board has promulgated.

However, the Board does not comply with the following provisions:

- The Board should send status reports to the complainant and respondent within six months of the complaint being filed (§30-1-5(c)).
- The Board should have a register of all applicants with the information specified in code, such as the date of application, name, age, education and other qualifications, place of residence, examination required, whether the license was granted or denied, any suspensions, etc. (§30-1-12(a)).
- The Board should submit an annual report to the Governor and Legislature describing transactions for the preceding two years (§30-1-12(b)).
- The Board’s meetings should be open to the public and published in a timely manner (§30-1-12(b)).
- The Board does not comply with Child Support enforcement by requiring license applicants to certify on the application that they have an obligation, the obligation is not six months in arrearages, or applicants are not the subject of a child support subpoena or warrant (§48-15-303(a)).
- The Board should provide public access on a website to all completed disciplinary actions in which discipline was ordered (§30-1-5(d)).

Minutes contain an “off the record” section which described conversation pertaining to reestablishing a lobbying organization.

Additionally, the Legislative Auditor is concerned with the number and nature of the Board’s administrative issues:

- The Board provided minutes for its December 6, 2019 meeting, which were approved on September 1, 2020. These minutes contain an “off the record” section which described conversation pertaining to reestablishing a lobbying organization. Additionally, these minutes contained a nearly identical section of text⁶ to minutes from June 2019.⁷
- Due to inadequate board records, the audit team could not confirm the number of current licensees.
- The Board administrator stated in a letter that February 10, 2017 was the first date the Board administered tests. When the audit team requested records of that meeting, the administrator provided another letter stating the February 10, 2017 meeting was cancelled.

Due to inadequate board records, the audit team could not confirm the number of current licensees.

⁶ The duplicated sections differ in the date of the next meeting and the spelling of a licensee’s name.

⁷ Minutes provided for 21 June 2019 are identical to minutes in an annual report for 19 June 2019.

- While the administrator stated the Board’s first testing date was in 2017, she later provided a record of paying a board member for administering tests as early as 2012.
- This board member was not paid for test administration until 2017, five years after the first date on the document. However, the board member did not submit an invoice until 2015. Additionally, the transition to wvOASIS and need to coordinate with the Department of Health and Human Resources delayed the process.
- The administrator paid a member of another board from the Board of Hearing Aid Dealer’s fund.⁸

The audit team experienced numerous problems communicating with the Board.

The Board Is Inaccessible.

As mentioned in Issue 1, the Legislative Auditor is concerned with the Board’s accessibility. The audit team experienced difficulties contacting the Board. Given these issues and cancelled meetings, unlocatable meeting minutes, and conference calls with limited accessibility, the Legislative Auditor concludes the Board is not accessible to the public.

The 2009 PERD report on the Board found a lack of public accessibility. At that time, the Board had no website or permanent office space, and did not publish its address and telephone number in the Charleston telephone directory. While the Board now has a website and permanent office space, the Legislative Auditor continues to be concerned with the accessibility of this Board.

Table 1 below summarizes the Board’s response times. The audit team experienced numerous problems communicating with the Board. The most notable lapse in communication spanned from late March to mid-May. The Board did not respond to emails or phone calls and there was no indication that the Board was receiving communications. While the COVID-19 pandemic may have exacerbated these issues, they are also the result of the Board having only one part-time worker, use of non-state technology resources, and failure to ensure all relevant information is published, correct, and current.

While the COVID-19 pandemic may have exacerbated these issues, they are also the result of the Board having only one part-time worker, use of non-state technology resources, and failure to ensure all relevant information is published, correct, and current.

⁸ *The administrator left a comment on the financial document regarding the error and later corrected the issue, but the error persisted until the audit team brought it to her attention in May 2020.*

Table 1
Summary of Board Response Time to Letters

	Sent	Response Requested By	Extension To	Update Requested	Response Received	Response Time (days)
Letter 1	2/11/2020	2/25/2020	3/2/2020	-	3/5/2020	23
Letter 2	3/9/2020	3/17/2020	-	3/19/2020	5/15/2020	67
Letter 3	3/23/2020	4/6/2020	-	-	5/15/2020	53
Letter 4	3/23/2020	4/6/2020	-	-	5/15/2020	53
Letter 5	6/18/2020	7/2/2020	7/8/2020	-	7/8/2020	20
	-	-	7/29/2020	-	7/27/2020	39
Letter 6	7/10/2020	7/17/2020	-	-	7/13/2020	3
Average						37

Source: Letters sent by PERD, responses from the Board, and emails from the Board.

The Board required extensions to response dates for each letter except Letter 6, which only required confirmation the audit team accurately summarized statements made by the administrator during an interview. The Board's primary purpose is to protect the public through regulation of hearing aid dealers and being accessible to the public. Given the audit team's difficulty contacting the Board, the Legislative Auditor concludes that the Board is inaccessible to the public.

Some accessibility issues are attributable to the Board's use of technology. The Board currently uses a private domain email address, rather than one provided and administered by the State. Over the course of this audit, numerous emails the Board sent were not received by the audit team; the Board administrator entered the primary contact's email address incorrectly and this problem continued intermittently for months, leading to communication delays. Additionally, the audit team received information from the administrator's personal Google account.

Additionally, the Legislative Auditor is concerned about the accessibility of the Board's meetings. The Board cancelled six meetings in fiscal years 2017 through 2019 without having the notices removed from the Secretary of State's website. This amounts to 50% of the Board's posted meetings. Additionally, many meetings were conducted as conference calls, with no indication they were to be conducted in that manner. No call-in number was provided in the meeting notices. When asked about this practice, the Board stated:

"The meetings that you listed were held at the location that was posted on the Secretary of State's website. That is the Board office address and I [board administrator]

Given the audit team's difficulty contacting the Board, the Legislative Auditor concludes that the Board is inaccessible to the public.

The Legislative Auditor is concerned about the accessibility of the Board's meetings.

was present there for the conference call. Any member of the public wanting to attend could do so by going to the address listed on the meeting notice and listening in on the call via speakerphone.”

While meetings conducted via conference call may be considered accessible to the public when conducted appropriately, it may be difficult to accommodate people with hearing loss when meetings are remote and audio-only. If the Board cannot make adequate accommodations to involve the hearing-impaired population in its meetings, then the Legislative Auditor questions its accessibility and effectiveness.

This is of particular concern because the technology is available to accommodate people with hearing loss. The West Virginia Commission for the Deaf and Hard of Hearing provides information about the West Virginia Relay Service, “a free service for all West Virginia residents, connecting individuals who are deaf, deafblind, hard-of-hearing, or have a speech disability with users of standard telephones.” This service provides live captioning and can be scheduled in advance. However, use of this system would require adequate planning and notifying potential public participants of the steps necessary for the Board to make this accommodation. The Board’s website currently provides no link to the Commission for the Deaf and Hard of Hearing’s website, reference to this service, information on upcoming meetings, conference call information, or how to request an accommodation to participate in a board meeting or conference call if necessary.

Furthermore, the Legislative Auditor is concerned about the general accessibility of the Board’s conference calls. The audit team had to contact the administrator multiple times over several days to obtain the call-in number and meeting password to observe the Board’s September 1, 2020 meeting. Additionally, while allowing members of the public to listen to the call in the Board’s office could enable public participation in a board meeting, it is unnecessarily burdensome for a member of the public to travel to Charleston to listen to a conference call when he or she may be located in a distant part of the state and could have participated without traveling. Furthermore, since meetings are cancelled without the notice being removed, it is possible a member of the public could travel to Charleston only to find the meeting cancelled. **The Legislative Auditor recommends the Board consider making conference calls more accessible to the public and take steps to ensure the public is adequately notified of meeting cancellations.**

The Legislative Auditor Is Concerned by the Content of Some Meeting Minutes.

On September 1, 2020, the board administrator provided the audit team with items to be discussed at the meeting that occurred on the same

If the Board cannot make adequate accommodations to involve the hearing-impaired population in its meetings, then the Legislative Auditor questions its accessibility and effectiveness.

While allowing members of the public to listen to the call in the Board’s office could enable public participation in a board meeting, it is unnecessarily burdensome for a member of the public to travel to Charleston to listen to a conference call when he or she may be located in a distant part of the state and could have participated without traveling. Furthermore, since meetings are cancelled without the notice being removed, it is possible a member of the public could travel to Charleston only to find the meeting cancelled.

date. Included in the files provided were meeting minutes for a conference call held on December 6, 2019. The audit team noted several issues with the meeting minutes provided. Of significant concern is an item labeled as “off record”, despite the fact meeting minutes are the official record of a public meeting. This section is quoted below:

“Off record – Discussion of reestablishing the WV Hearing Aid Society and joining the HIS [sic] – very important for legislative purposes as we can do things like lobbying. [Board member] is going to get it reestablished so she can open a checking account to deposit the money from the old organization.”

The Legislative Auditor questions the propriety of having this discussion during a board meeting. W.Va. Code §30-1-22 states:

“No board may employ or contract with any person whose job functions or obligations include lobbying on behalf of the board: Provided, That the director, board counsel and appointed board members may lobby on behalf of the board.”

Of further concern is the apparent intent to discuss establishing a lobbying organization “off record” in a conference call during a board meeting intended to be open to the public. While some aspect of this conversation ultimately appeared on record, the Legislative Auditor is concerned by the appearance of this phrase in meeting minutes, particularly pertaining to discussion of lobbying.

The Board Submitted a Rule Change During This Audit Which Doubles the Initial and Annual Cost of Licensure.

On July 21, 2020, the Board filed a new legislative rule with the Secretary of State’s Office. The comment period on this rule ended on August 22, 2020. The proposed rule would raise the initial license fee and renewal fee for both full licensees and trainees, from \$100 to \$200. While raising licensing fees may help address the Board’s declining cash balance, it should be noted that this change substantially increases the annual cost of licensure in West Virginia. Table 2 below shows licensure fees in bordering states and the calculated annual cost. Kentucky is currently the costliest bordering state to be licensed in, at an annual cost of \$200. This fee increase will result in West Virginia licensees paying higher fees than any bordering state. An annual cost of \$200 for a license in West Virginia would be twice the cost of an equivalent license in Pennsylvania.

Of significant concern is an item labeled as “off record”, despite the fact meeting minutes are the official record of a public meeting.

Table 2
Hearing Aid Dealer Licensure Fees for West Virginia and Surrounding States

State	Initial Fee (Licensee)		Licensee Renewal Fee		Licensee Renewal Cycle		Cost per year	
Kentucky	\$200.00		\$200.00		Annually		\$200.00	
Maryland	\$250.00		\$250.00		Biennial		\$125.00	
	Dealer	Fitter	Dealer	Fitter	Dealer	Fitter	Dealer	Fitter
Ohio	\$200.00	\$262.00	\$120.00	\$120.00	Biennial	Biennial	\$60.00	\$60.00
Pennsylvania	\$200.00		\$100.00		Annually		\$100.00	
Virginia	\$30.00		\$20.00		Biennial		\$10.00	
West Virginia*	\$200.00		\$200.00		Annually		\$200.00	

Source: State licensure boards' websites and W.Va. Code of State Rules.
**The Board's fees are currently \$100, but a pending rule change will increase the fees to \$200.*

The increased cost imposed upon licensees is of concern, but the Legislative Auditor is also concerned by the way this proposed rule was filed. According to the Board's meeting minutes, it decided to raise fees in June 2019.⁹ However, the corresponding rule change was not submitted until July 21, 2020, 13 months after the Board voted to approve the change. Additionally, the Board would not receive comments sent to the email address it listed in the rule due to a typographical error. This rule was not filed as an update to an existing rule, although all provisions remained the same except for license fees, which were doubled. The Board did not have a meeting within the six months preceding the filing of this rule. Although there is no statutory requirement specifying when a meeting must occur before a rule change, the Legislative Auditor is concerned that the public and licensees may not have had adequate notice of an impending rule change due to the delay in filing. The delay in filing the rule after it was voted on and erroneous contact information may have potentially limited public participation in the rule-making process, particularly as the rule was filed during the COVID-19 pandemic.

The Board would not receive comments sent to the email address it listed in the rule due to a typographical error.

Although the Board is financially self-sufficient as required by West Virginia Code (§30-1-6(c)), its expenditures consistently exceed its revenue.

The Board Is Financially Self-Sufficient, But the Ending Cash Balance Has Declined to a Concerning Level.

Although the Board is financially self-sufficient as required by West Virginia Code (§30-1-6(c)), its expenditures consistently exceed its revenue, as shown in Table 3 below. This has caused a declining cash balance. The Legislative Auditor considers cash reserves between one

⁹The Board has conflicting records as to when this meeting occurred. Identical meeting minutes were provided for two different dates in June 2019. The administrator stated the date on one of these documents was incorrect.

to two times a board's annual expenditures to be at an acceptable level. While the Board currently has approximately one year of expenditures in cash reserves, the steady decline of its cash balance is a cause for concern. The Board is currently financially self-sufficient, but continued deficit spending is not sustainable. If this trend continues, the Board risks having insufficient funds to meet unexpected or emergency situations. While raising licensure fees as discussed above may help address the Board's declining cash balance, this would substantially increase the cost of licensure in West Virginia. **The Legislative Auditor recommends the Board reduce out-of-state travel expenditures and ensure it collects all revenue it is legally entitled to, such as from the potentially unlicensed businesses described in Issue 1.**

The Legislative Auditor recommends the Board reduce out-of-state travel expenditures and ensure it collects all revenue it is legally entitled to, such as from the potentially unlicensed businesses described in Issue 1.

Table 3
Board of Hearing Aid Dealers and Fitters and Budget Information
FY 2016-2020

Fiscal Year	Beginning Cash Balance	Revenue	Disbursements	Ending Cash Balance	End-of-Year Cash as a Percent of Annual Expenditures
2016	\$44,545	\$11,700	\$15,773	\$40,473	257%
2017	\$40,473	\$13,700	\$20,937	\$33,236	159%
2018	\$33,236	\$12,000	\$15,278	\$29,958	196%
2019	\$29,958	\$16,000	\$19,895	\$26,063	131%
2020	\$20,063	\$10,600	\$18,416	\$18,247	99%
Average	\$35,745	\$13,117	\$16,775	\$32,087	212%

Source: West Virginia Our Advanced Solution with Integrated Systems (OASIS) reports (WV-FIN-GL-151 for fiscal years 2015 through 2019) and PERD calculations.

Revenue primarily comes from licensing applications and renewal fees and has been relatively flat since 2015. Increasing disbursements are primarily driven by rising payroll costs. While a board member typically goes to a national conference annually, travel expenditures alone are not sufficient to account for rising costs. Other expenditures have not increased significantly. The Board has combined operations with the Board of Landscape Architects under a Memorandum of Understanding to save money and share costs, yet its cash balance continues to decline.

The Board's procedure for financial management lacks controls with respect to segregation of duties.

Financial Internal Controls and Recordkeeping Need to Be Improved.

The Board's procedure for financial management lacks controls with respect to segregation of duties. Segregation of duties is an important internal control that guards against inappropriate use of funds received

by the Board. The Board's single employee handles all components of financial transactions and no payments are received online. Thus, the Board cannot segregate duties for processing cash receipts with only one part-time employee. As this problem is common with small regulatory boards, it is PERD's procedure to conduct standard fraud-risk tests. **However, when these tests returned results of concern, requiring a more detailed evaluation of the Board's finances, the Board could not provide records sufficient to resolve questions concerning its finances.**

In order to assess the risk of fraud and gain reasonable assurance that fraud has not occurred, PERD examined the Board's revenue and expenditures. For revenue, PERD calculated the minimum expected revenue for the Board by multiplying annual fees by the number of licensees for FY 2016 through 2020.

Table 4 below contains the results of the expected and actual revenue test. This test calculates a board's expected revenue, per licensee count and other expected fees (such as testing or trainee numbers). However, the audit team encountered problems calculating the Board's expected revenue due to varying licensee counts. Table 4 represents the audit team's best estimate of expected revenue given the records available.

Fiscal Year	Expected Revenues	Actual Revenues
2016	\$12,233	\$11,700
2017	\$12,900	\$13,700
2018	\$12,100	\$12,000
2019	\$13,350	\$16,000
2020	\$13,225	\$10,600
All Years	\$63,809	\$64,000

Source: Board annual reports, testing and trainee information provided by the Board; OASIS reports (WV-FIN-FL-151) for fiscal years 2016 through 2020; and PERD calculations.

It should be noted that during the course of the audit, secondary documents provided by the Board called into question the accuracy of the provided roster and the licensee lists in the annual reports used as the basis for PERD's estimates in Table 4. Furthermore, trainees and businesses are not included in the annual reports, and similar to the licensee data,

When these tests returned results of concern, requiring a more detailed evaluation of the Board's finances, the Board could not provide records sufficient to resolve questions concerning its finances.

It should be noted that during the course of the audit, secondary documents provided by the Board called into question the accuracy of the provided roster and the licensee lists in the annual reports used as the basis for PERD's estimates in Table 4.

the audit team could not corroborate Board-provided lists with secondary sources. Thus, the audit team sought clarification regarding conflicting licensee lists, but each request yielded a different count of licensees with limited supporting evidence. As records were conflicting and could not be corroborated with secondary sources, the audit team ultimately concluded the Board does not maintain an accurate list of licensees. Due to a lack of an accurate count of licensee, the audit team could not accurately calculate expected revenues. Although the difference between expected and actual revenues is relatively small in some years, the frequency in which expected revenue is below actual is concerning. Under such circumstances, attempts should be made to reduce the risk of fraud. **Therefore, the Legislative Auditor recommends the Board utilize an online renewal and payment process, and consider using the State Treasurer's Lockbox system.**

The inadequate state of the Board's records limited the audit team's ability to effectively evaluate its finances. The lack of reliable and consistent records is indicative of mismanagement. **The Legislative Auditor is concerned the Board's recordkeeping is inadequate to determine 1) if the Board has collected all fees it is required to by state law and 2) if fraud may or may not have occurred.** The Legislative Auditor questions the efficacy of the Board if it cannot manage the records of less than 150 estimated licensees with a reasonable degree of accuracy. If the Board cannot effectively regulate the industry, the Legislative Auditor questions its ability to protect the public and therefore the continued need for the Board. The Board must ensure financial information is appropriately documented and transparent and take steps to reduce the risk of fraud.

When actual revenue is significantly less than expected revenue, it is PERD's procedure to review the Board's revenue in greater detail. Consequently, the audit team requested the Board's deposit records for FY 2016 through FY 2020. However, the audit team could not map a significant portion of revenue to specific licensees or fees due to records with insufficient detail. The audit team requested copies of deposited checks and money orders to resolve its questions regarding the Board's finances. Either copies of some checks or the checks themselves are missing, as the sum of checks attached to deposit sheets did not match the total listed on the cover sheet. As a result, the audit team could not review all revenue received to determine the cause of the perceived shortfalls.

It should be noted that revenue shortfalls for regulatory boards may be explained by a deposit of revenue funds in the next fiscal year. When licensees are expected to renew their licenses by the last day of June each year, this can lead to revenue for one renewal cycle being deposited in different fiscal years, which can cause a shortfall one year and an overage the next. However, the audit team could not account for the perceived shortfalls by adjusting for the timing of deposits.

As records were conflicting and could not be corroborated with secondary sources, the audit team ultimately concluded the Board does not maintain an accurate list of licensees.

The Legislative Auditor is concerned the Board's recordkeeping is inadequate to determine 1) if the Board has collected all fees it is required to by state law and 2) if fraud may or may not have occurred.

Additionally, the audit team found no record of licenses suspended for late payment, despite numerous checks being written and deposited after the June 30 deadline. Moreover, the audit team found few identifiable late fees, despite approximately 13% of checks being written in July and August (calculated FY 2016 through 2020). If a licensee does not make timely payment and application for renewal, the Board should take appropriate action, including charging a late fee or suspending the license. The Board's failure to actively manage license renewals is cause for concern; **the Legislative Auditor recommends the Board improve its tracking of license renewals and ensure all fees are appropriately charged and deposited in a timely manner.**

To determine the risk of fraud on the expenditure side, it is PERD's procedure to evaluate what percentage of a board's expenditures can be considered expected or required (legally required or contractually binding, or reasonably expected or essential for the normal operation of an agency). Table 5 below shows the annual percentage of expected expenditures out of all board expenditures for that year. The audit team evaluated the Board's expenditures for FY 2016 through 2020 and determined that, on average, 88 percent of the Board's expenditures consisted of expected and required expenditures. The Legislative Auditor's opinion is that when the Board's required and expected expenditures are 90 percent or more of the Board's total annual expenditures, the likelihood of fraud having occurred on the expenditure side is relatively low. However, if expected and required expenditures are significantly below 90 percent, then the likelihood of fraud and abuse occurring is greater.

The Legislative Auditor recommends the Board improve its tracking of license renewals and ensure all fees are appropriately charged and deposited in a timely manner.

Fiscal Year	Percent of Expected & Required Expenditures
2016	80
2017	87
2018	95
2019	86
2020	88
Average	88

Source: PERD calculations based on OASIS (WV-FIN-GL-151) data for fiscal years 2016 through 2020.

While the Board's expected and required expenditures are not significantly below 90 percent on average, the audit team examined certain expenditures, given other concerns about the Board's financial recordkeeping practices. Travel accounts for a significant amount of Board expenditures not considered to be required or expected. Some travel expenses are expected for travel to and from board meetings, but as previously discussed, the Board conducts a large portion of its meetings by teleconference. Consequently, board members would not have to travel to and from Charleston for every meeting.

The audit team determined the Board's travel expenses are largely attributable to attendance at a national professional conference. Table 6 below summarizes the location and total cost of attendance at the national conference by fiscal year. Fiscal years 2016 and 2020 were included in the analysis below, due to the widely varying values between 2017 and 2019; these years were included to better depict the Board's spending patterns over time.

Table 6
Cost of Travel to National Conference
FY 2016-2020

Fiscal Year	Location	Cost	Percent of Total Disbursements
2016	Orlando, FL	\$1,534.26	10%
2017	Chicago, IL	\$1,966.82	9%
2018	-	-	-
2019	Phoenix, AZ	\$826.60	4%
2020	Nashville, TN	\$1,962.85	11%

Source: OASIS data (from WV-FIN-GL-151 reports) for fiscal years 2016 through 2020.

The audit team determined the Board's travel expenses are largely attributable to attendance at a national professional conference.

The Legislative Auditor recommends the Board consider reevaluating its out-of-state travel given its current financial condition.

While attendance at national conferences is sometimes necessary or beneficial for board members, the Legislative Auditor recommends the Board consider if annual attendance at this national conference is prudent given its current financial situation. While not all expenses are charged to the Board every year, cost of attendance represents a substantial portion of this Board's budget. **The Legislative Auditor recommends the Board consider reevaluating its out-of-state travel given its current financial condition.**

Revenue Is Not Being Deposited Within 24 Hours.

Additionally, the Board does not deposit revenue as required by statute. As shown in Table 7, the administrator takes an average of 18 days to deposit a check (based on the date of the check). The audit team acknowledges that checks may not be sent for several days after they are written or may be delayed by the mail service. While using date of receipt would be a better methodology, the date the check was written is used as there is no tracked date of receipt. Moreover, as also shown in Table 7, there are instances of checks not being deposited for months.

Fiscal Year	Average Days	Maximum Days
2016	16	58
2017	19	103
2018	18	95
2019	19	82
2020	17	101
Average	18	88

Source: PERD review of deposit records provided by the Board.

There are instances of checks not being deposited for months.

W. Va. Code §12-2-2(a) states:

“All officials and employees of the state authorized by statute to accept moneys on behalf of the State of West Virginia shall keep a daily itemized record of moneys received for deposit in the State Treasury and shall deposit within one business day with the State Treasurer all moneys received or collected by them for or on behalf of the state for any purpose whatsoever.”

Compliance with the 24-hour deposit requirement is difficult for a board with one part-time employee. **In order to address the lack of segregation of financial duties, and to allow all deposits to be made within the statutory time frame, the Legislative Auditor recommends that the Board begin utilizing the State Treasurer’s lockbox and an online renewal platform.**

In order to address the lack of segregation of financial duties, and to allow all deposits to be made within the statutory time frame, the Legislative Auditor recommends that the Board begin utilizing the State Treasurer’s lockbox and an online renewal platform.

The Board Needs to Review Its Rules and Update Outdated Information.

PERD reviewed the rules promulgated by the Board and found that, as written, they are generally intended to protect the public and do not unduly favor the profession, although some provisions may offer limited protection due to obsolete provisions. For example, **one rule contains a provision requiring display of the Board’s contact information; however, the address the Board lists was years out of date at the time the rule was filed.** The Board should review its rules and remove obsolete information.

Additionally, while provisions incorporating standards of other organizations may appear to protect the public on their face, referring to old standards from defunct organizations has limited benefit, particularly when the rules do not specify the criteria being used. The provision below refers to defunct organizations:

“In evaluating advertising, the Board may use all available criteria (such as the regulations of the Federal Trade Commission, the code of ethics of the National Hearing Aid Society, the Hearing Aid Industry Conference and the West Virginia Hearing Aid Society) and may regard a violation of any of these criteria as unethical conduct.”

Within this provision, several organizations that no longer exist or now operate under a different name are listed. The rules do not detail the precise criteria used, nor does the Board provide this information on its website or elsewhere. If these criteria are no longer widely or publicly available, it may result in licensees being held to a standard they are not aware of or that changes without notice. Also, the criteria of defunct organizations may be obsolete or in some cases non-existent, rendering certain aspects of the provision moot. If the public cannot identify specific protections, then it may have limited ability to identify certain acts as prohibited, which in turn would hinder its ability to bring questionable conduct to the Board’s attention. The Legislative Auditor recommends the Board regularly review its rules and ensure referenced standards and organizations continue to be applicable.

Additionally, while the Board has passed a rule regarding consideration of prior criminal convictions in initial licensure determination, as required by code, this rule may contradict sections of other rules. Specifically, CSR §8-5-3.1 states, *“The board may not disqualify an applicant from initial licensure because of a prior criminal conviction that remains unreversed unless that conviction is for a crime that bears a rational nexus to the practice of hearing-aid dealing and fitting.”* In contrast, CSR §8-1-4.6a requires applicants to be of “good moral character” and that they “have never been convicted...for a crime involving moral turpitude.” Additionally, CSR §8-3-4 states, *“The Board may deny an application for license... upon satisfactory proof that*

If the public cannot identify specific protections, then it may have limited ability to identify certain acts as prohibited, which in turn would hinder its ability to bring questionable conduct to the Board’s attention.

a licensee has been convicted of a felony...” The Legislature Auditor recommends the Board review its rules and correct contradictions.

The Board’s rules also contain provisions the Board itself does not follow. For example, the Board’s rules state fees can only be paid by money order or certified check. The agency administrator stated current practice still reflects this rule, although the audit team found record of personal checks being used to pay fees. Additionally, the Legislative Auditor questions the continued appropriateness of this rule. If a money order or certified check is not necessary for the Board to receive secure payments, then this requirement may be unnecessarily burdensome for applicants. Given concerns about the Board’s inability to segregate duties and lack of internal control, the Board should consider removing this requirement and updating the rule to reflect its current practices and allow secure online payments.

The Board’s rules also contain provisions the Board itself does not follow.

Other provisions that may be overly burdensome on applicants exist. The Board’s legislative rule requires all applications be signed and sworn before a notary public. While the audit team did not identify any applications sworn before a notary public, the provision as written may present an unnecessary burden on applicants. The Board also requires applicants appear before it in-person before the issuance of a license or permit, unless waived by the Board. The audit team found no record of such appearances occurring or of appearances being waived. The Legislative Auditor recommends the Board review its rules for unbeneficial and burdensome requirements, and requirements which are no longer applicable or appropriate. If a provision is deemed unnecessary, the Board should remove it from its rules.

In addition to concerns about how the Board handles complaints in practice, the Board’s rules may hinder the public’s ability to file complaints. While CSR §8-3-5 allows a complaint be filed in any written form and only states the Board *may* provide a form for complaints, the rule then specifies that a complaint should contain specific elements. This includes the name and address of the hearing-aid dealer against whom the complaint is lodged, the date of the transaction or fitting, the name of any potential witnesses, and the name of the business where the incident occurred. While allowing a complaint to be filed in any written form is permissive enough to allow a number of complaints, the Board’s website does not provide guidelines for what a complaint should include, nor does it provide a standard complaint form. Although not currently required by its rules, the Board should provide a standard complaint form and instructions on how to file a complaint to ease the process for the public and make it clear that the Board does, in fact, handle complaints against hearing aid dealers.

In addition to concerns about how the Board handles complaints in practice, the Board’s rules may hinder the public’s ability to file complaints.

The Board Does Not Comply with Chapter 30 Complaint Requirements That Ensure Due Process for Licensees.

Table 8 below provides a summary of Board actions taken in response to complaints. Between fiscal years 2017 and 2019, the Board handled only two complaints, one in fiscal year 2017 and the other in fiscal year 2018. It was aware of a third complaint, but this complaint was filed with and resolved by the Attorney General's Office. The two complaints received and resolved by the Board lacked documentation of board actions required by statute and by rule. When asked about the absence of these documents, the administrator indicated she was then unaware of certain procedural requirements.

Table 8
Summary of Complaints

Complaint Number	Notice to Respondent?	Acknowledgment?	6-Month Update Complainant?	6-Month Update Respondent?	Days Open
17-01	No	No	No	No	335
18-01	Yes	No	No	No	339

Source: PERD review of Board complaint files

The 2017 complaint, which was originally filed with the Attorney General's Office, had several notable issues: the timeline of the complaint is unclear,¹⁰ several pages of documentation are unreadable, the Board did not send required letters according to statutorily required timelines,¹¹ and the dealer in the complaint documentation is not the dealer listed as the respondent in the Board's records. Additionally, it is unclear who is the complainant. The complaint concerns a purchase made by a member of the public but the complaint information was submitted by the Attorney General's Office. The complaint file contains no record of interaction with either the member of the public or the Attorney General's Office. The administrator stated she did not contact the complainant to ensure the matter was satisfactorily resolved, as she considered a copy of the refund check from the business for the sale in question sufficient to close the complaint. However, the Board does not appear to have received documentation of the refund until six months after the complaint was received. The complaint was ultimately closed 10 months after the refund check was issued, despite Board meetings occurring between the date of

The administrator stated she did not contact the complainant to ensure the matter was satisfactorily resolved, as she considered a copy of the refund check from the business for the sale in question sufficient to close the complaint.

¹⁰ The Board lists the complaint as being opened before it received the complaint.

¹¹ The agency administrator stated she was previously unaware of some procedural requirements, such as sending an acknowledgment to the complainant and notification to the respondent.

the refund and the date the complaint was closed.¹² Additionally, this complaint was made against a dealer employed by the board chair. While the administrator stated the chair recuses herself from any matter involving her business, she could not provide documentation of any such recusal, nor was it evident in the complaint file or meeting minutes from that period.

The 2018 complaint file did contain a letter sent to the respondent notifying her of the complaint made against her. However, despite the complainant (the Speech-Audiology Board) providing all relevant information, the complaint took 11 months to resolve. The complaint file contains no record of an acknowledgment of the Speech-Audiology Board's complaint, nor the required status updates at six months.

The Board does not comply with its own rules or Chapter 30 guidelines for complaints, despite being responsible for a relatively small number of complaints. Moreover, the Board does not keep sufficient record of the complaints it receives. Based on the absence of documentation of required actions, such as notification a complaint has been filed and status updates (W.Va. Code §30-1-5(c)), the Board does not provide due process to its licensees. The Legislative Auditor recommends the Board improve its recordkeeping practices for complaints.

The Board Maintains Licensee Continuing Education Files.

The audit team analyzed continuing education records for a random sample of 44 licensees. The Board requires all licensees to submit proof of continuing education for license renewal. As required by W.Va. Code §30-26-9(b), each licensee renewing his or her license must submit proof that he or she completed 20 hours of approved continuing education biennially in even-numbered years. The Board receives and reviews documentation from each licensee to determine compliance with continuing education requirements. While the audit team noted issues in the original records provided, the Board was ultimately able to account for discrepancies in continuing education records.

The Board Lacks Statutorily Required Members.

W.Va. Code §30-26-3(a) requires the Board be composed of five members: three hearing aid dealers with five or more years of experience, a person holding a degree in audiology, and a person licensed to practice medicine in West Virginia. Additionally, W.Va. Code §30-1-4a requires health professional licensing boards to have at least one lay member; W.Va. Code §30-1-15 identifies the Board of Hearing Aid Dealers and Fitters as a health profession licensing board.

While the administrator stated the chair recuses herself from any matter involving her business, she could not provide documentation of any such recusal, nor was it evident in the complaint file or meeting minutes from that period.

Based on the absence of documentation of required actions, such as notification a complaint has been filed and status updates (W.Va. Code §30-1-5(c)), the Board does not provide due process to its licensees.

¹² When asked about the delay, the administrator stated she was then unaware the Board itself needed to act to officially close the complaint.

previous audiologist member resigned in 2017. However, the Board currently has no lay members. When the audit team inquired about the required lay members, the administrator stated:

“I have personally tried to find a lay member for our board but have not been successful in generating any interest. I have contacted...the Governor’s office [to see if it] could find someone to sit on our board as a lay member.”

The Board did not provide documentation of its communications with the Governor’s Office or of other efforts to appoint a lay member.

The Board currently has no lay members.

The Board’s Office Is Reasonably Accessible to Disabled Individuals.

The audit team conducted a site visit to the Board’s office located at 179 Summers Street, in downtown Charleston, also known as the People’s Building. This visit was to determine if the office and building meet select requirements of the Americans with Disabilities Act (ADA). The facility, including handicap parking, the entrance, main doors, first floor hallway, and elevators were reviewed by PERD in 2019, as part of the 2019 report on the Board of Acupuncture, located in the same building. PERD found the building is generally accessible despite minor issues.

PERD’s review did not assess the entire building, nor is the review intended to certify the building as ADA compliant. The audit team used professional judgment and the ADA checklist as a guide to determine if the building is reasonably accessible to disabled individuals.

Although the Board complies with some of the general provisions of Chapter 30, the Board does not comply with several significant provisions, such as due process requirements.

Conclusion

Although the Board complies with some of the general provisions of Chapter 30, the Board does not comply with several significant provisions, such as due process requirements. The Board has inadequate staff to segregate duties and has not taken steps to reduce the risk of fraud. Moreover, the Board is not composed of the members required by statute. While the Board’s rules, as written, appear to protect the public, lack of enforcement of rules makes their efficacy uncertain. The Board should improve its compliance with the general provisions of Chapter 30 to ensure it adequately protects the public.

Recommendations

- The Board should ensure it collects all revenue it is legally entitled to, such as currently unlicensed businesses, to address its declining cash balance.*

6. *The Board should review the documents on its website and correct any errors.*
7. *The Board should use the West Virginia State Treasurer's Office Lockbox system.*
8. *The Board should review its current rules for accuracy and update inaccurate provisions.*

ISSUE 3

The West Virginia Board of Hearing Aid Dealers and Fitters' Website Requires Improvements to Enhance User-Friendliness and Transparency.

Issue Summary

The Office of the Legislative Auditor conducted a literature review on assessments of governmental websites and developed an assessment tool to evaluate West Virginia's state agency websites (see Appendix B). The assessment tool lists several website elements. Some elements should be included in every website, while other elements such as social media links, graphics and audio/video features may not be necessary or practical for state agencies. This has been a standard part of PERD's review of Chapter 30 boards since 2012. Table 9 indicates that the Board integrates 38 percent of the checklist items in its website. This measure shows that the Board website needs improvement in both user-friendliness and transparency.

Substantial Improvement Needed	More Improvement Needed	Modest Improvement Needed	Little or No Improvement Needed
0-25%	26-50%	51-75%	76-100%
	Board 38%		

Source: The Legislative Auditor's review of the West Virginia Board of Hearing Aid Dealers and Fitters website.

The Board's Website Scores Low in Both User-Friendliness and Transparency.

In order for citizens to engage with a state agency online, they should be able to gain access to the website and comprehend the information posted there. A user-friendly website is up-to-date, readable, well-organized, and intuitive. The website should provide a thorough description of the organization's role and structure and display contact information prominently. Governmental websites should include budget information and income sources to maintain transparency. The Legislative Auditor reviewed the Board's website for both user-friendliness and transparency. As shown in Table 10 below, the website scores low in both user-friendliness and transparency. **The Board should consider**

improving the website to provide a better online experience for the public.

Table 10
Board Website Evaluation Score

Category	Possible Points	Agency Points	Percentage
User-Friendly	18	8	44%
Transparent	32	11	34%
Total	50	19	38%

Source: Legislative Auditor's review of the Board's website as of February 10, 2020.

Furthermore, while conducting the assessment, the audit team encountered notable web accessibility issues that affect user-friendliness and transparency. These are accessibility issues the public would reasonably encounter while using the Board's website. For a time, the Board's website did not appear correctly on common search engines; it either did not appear at all (Google) or had no description (Bing). Also of concern is the Board's use of a .org domain rather than a .gov domain. While there is no requirement for state and local governments to use the .gov domain, it is generally considered an accurate indicator of a government website, which in turn signifies legitimacy and authority. These issues hinder site recognition and accessibility. If a site cannot be easily found and identified as legitimate, then its content is largely moot. **Consequently, poor web accessibility may lead to user-frustration and lack of transparency. The Legislative Auditor recommends the Legislature establish certain content and functionality requirements for regulatory board websites to ensure consistent usability.**

For a time, the Board's website did not appear correctly on common search engines; it either did not appear at all (Google) or had no description (Bing). Also of concern is the Board's use of a .org domain rather than a .gov domain.

The Board's Website Is Navigable, but Additional User-Friendly Features Should Be Considered.

While the Board's website is navigable, with a navigation bar at the top of every page as well as a link to the site's homepage, it lacks key features. The website does have a search function, but it is not readily accessible or on the homepage. The website lacks a site map, foreign language accessibility, and social media links. According to the Flesch-Kincaid Reading Test, the average readability of the text is on a 7th grade reading level, which is the recommended grade level for readability.

User-Friendly Considerations

Although some items may not be practical for this board, the following are some attributes that could improve user-friendliness:

- Search Tool - The website should contain a search box, preferably on every page.
- Foreign Language Accessibility - A link to translate all webpages into languages other than English.
- Site Map - A list of pages contained in a website that can be accessed by web crawlers and users.
- Feedback Options - A page where users can voluntarily submit feedback about the website or particular section of the website.
- Online survey/poll - A page where users can voluntarily submit feedback.
- Social Media Links - The website should contain buttons that allow users to post an agency's content to social media pages such as Facebook and Twitter.

The Board's Website Needs to Be More Transparent.

A transparent website has elements such as email contact information, the location of the agency, the agency's phone number. It will also have budgetary data and performance measures. A transparent website allows for citizen engagement. The Website Criteria Checklist and Points System (see Appendix B) demonstrates that the Board's website has only 11 of 32 core elements that are necessary for a transparent website that encourages understanding of the Board.

The website has contact information for the Agency Administrator and the Board's physical address and phone number. No contact information is available for the board members. The Board's website does not provide a complaint form, budget data, FOIA information, a calendar of events, performance measures and outcomes, or links to job postings and the Division of Personnel website.

Although some items may not be practical for this board, the following are some attributes that could improve the site's transparency:

- Administrator(s) Biography – A biography explaining the administrator(s) professional qualifications and experience.
- Privacy Policy – A clear explanation of the agency/state's online privacy policy.
- Complaint Form – A specific page that contains a form to file a complaint, preferably an online form.
- Budget – Budget data is available at the checkbook level, ideally in a searchable database.
- FOIA Information – Information on how to submit a FOIA request, ideally with an online submission form.
- Calendar of Events – Information on events, meetings, etc. ideally imbedded using a calendar program.

The Board's website does not provide a complaint form, budget data, FOIA information, a calendar of events, performance measures and outcomes, or links to job postings and the Division of Personnel website.

- Agency History – The agency’s website should include a page explaining how the agency was created, what it has done, and how, if applicable, has its mission changed over time.
- E-Publications – Agency publications should be online and downloadable.
- Agency Organizational Chart – A narrative describing the agency organization, preferably in a pictorial representation such as a hierarchy/organizational chart.
- Audio/Video features – Allows users to access and download relevant audio and video content.
- Performance Measures/Outcomes – A page linked to the homepage explaining the agency’s performance measures and outcomes.
- Job/Postings/Links to Personnel Division Website – The agency should have a section on the homepage for open job postings and a link to the application page for the Personnel Division.

The Legislature Has Previously Addressed the Need for Government Website Standardization.

In 2019, the Legislature passed HB 2992, which included the requirement that state executive agencies include certain contact information for its office and employees. The Legislative Auditor recommends consideration of a similar bill that would address website content and functionality standardization in state government. HB 2992 required executive agencies to provide office contact information, staff member contact information, an organizational chart, administrative officials, governing statutes and legislative and procedural rules, meeting minutes, and annual reports, when applicable. This bill was similar to HB 2446, which passed in 2017. However, both bills were vetoed. The veto messages cited over-broad application, noting the lack of exemptions for employees who work from their personal residence, or would be placed at risk should their information be published online (e.g. undercover law enforcement officers). Both veto messages affirmed the importance of providing the public with readily accessible information about state and local government.

While these bills would address content standardization, the Legislative Auditor further recommends the Legislature consider creating a central design standard for state websites, including the use of the .gov domain. Consistency in website design would promote board accessibility and recognition, as well as address other concerns more completely (such as usability for the vision impaired). Boards could continue to be responsible for specific content and submissions but use a standardized web format or have dedicated sections within a single

The Legislative Auditor further recommends the Legislature consider creating a central design standard for state websites, including the use of the .gov domain.

domain. Sharing and standardizing technology resources would not only promote consistency, but address accessibility issues that may be beyond the ability of small boards to correct. **While web accessibility may be an issue for all government agencies, the specific condition and needs of regulatory boards should be considered.**

Conclusion

The Legislative Auditor recommends the Legislature consider establishing a standard for regulatory board websites, including the requirement they all use a .gov domain. The Legislative Auditor finds that more improvements are needed to the Board's website in the areas of user-friendliness and transparency. The website can benefit from incorporating several common features. The website has several features that do not work, important information is omitted, and some information is incorrect. Providing website users with additional elements and capabilities, as suggested in the report, would improve user-friendliness and transparency.

Recommendations

9. *The Legislature should consider establishing a central standard for board website design.*
10. *The Board should consider improving its website to provide a better online experience for the public.*
11. *The Board should review the information on its website for accuracy and accessibility.*

Appendix A Transmittal Letter

WEST VIRGINIA LEGISLATURE *Performance Evaluation and Research Division*

Building 1, Room W-314
1900 Kanawha Boulevard, East
Charleston, West Virginia 25305-0610
(304) 347-4890
(304) 347-4939 FAX



John Sylvia
Director

April 13, 2021

Kendra Zamora, Agency Administrator
Board of Hearing Aid Dealers and Fitters
179 Summers St, Suite 715
Charleston, WV 25301

Dear Mrs. Zamora:

This is to transmit a draft copy of the regulatory board review of the Board of Hearing Aid Dealers and Fitters. This report may be presented during a future interim meeting of the Joint Committee on Government Operations, and the Joint Committee on Government Organization. We will inform you of the time and location once the information becomes available. It is expected that a representative from your agency be present at the meeting to orally respond to the report and answer any questions committee members may have during or after the meeting.

We need to schedule an exit conference to discuss any concerns you may have with the report. We would like to have the meeting on Friday, April 30, 2021. This meeting can occur by conference call or on Microsoft Teams. Please notify us to schedule an exact time. In addition, we need your written response by noon on Wednesday, May 5, 2021 in order for it to be included in the final report. If your agency intends to distribute additional material to committee members during the interim meeting, please contact the House Government Organization staff at 304-340-3192 by the Thursday prior to the meeting to make the necessary arrangements.

We request that your personnel not disclose the report to anyone not affiliated with your agency. Thank you for your cooperation.

Sincerely,

A handwritten signature in cursive script that reads "John Sylvia".

John Sylvia

Enclosure

Appendix B

Objectives, Scope and Methodology

The Performance Evaluation and Research Division (PERD) within the Office of the Legislative Auditor conducted this Regulatory Board Review of the Board of Hearing Aid Dealers and Fitters as required and authorized by the West Virginia Performance Review Act, Chapter 4, Article 10, of the *West Virginia Code*, as amended. The purpose of the Board, as established in West Virginia Code §30-26, is to protect the public through its licensing process, and to be the regulatory and disciplinary body for hearing aid dealers and fitters throughout the state.

Objectives

The objectives of this review are to determine if the Board should be continued, consolidated or terminated, and if conditions warrant a change in the degree of regulations. In addition, this review is intended to assess the Board's compliance with the general provisions of Chapter 30, Article 1, of the *West Virginia Code*, the Board's enabling statute §30-26, and other applicable rules and laws such as the Open Governmental Proceedings (WVC §6-9A) and purchasing requirements. Finally, it is the objective of the Legislative Auditor to assess the Board's website for user-friendliness and transparency.

Scope

The evaluation included a review of the Board's internal controls, policy and procedures, meeting minutes, complaint files from fiscal years 2017 through 2019, complaint-resolution process, disciplinary procedures and actions, revenues and expenditures for the period of fiscal years 2017 through 2019, continuing education requirements and verification, the Board's compliance with the general statutory provisions (WVC §30-1-et al.) for regulatory boards and other applicable laws, and key features of the Board's website. For calculations related to fraud-risk analysis (expected revenue, required expenditures, travel) the audit team included fiscal years 2016 and 2020, due to anomalies in the data or otherwise unexplainable inconsistencies.

Methodology

PERD gathered and analyzed several sources of information and conducted audit procedures to assess the sufficiency and appropriateness of the information used as audit evidence. The information gathered and audit procedures are described below.

PERD staff visited the Board's office in Charleston and met with its staff. However, due to the onset of the COVID-19 pandemic, most testimonial evidence was gathered by exchange of letters or interviews conducted via phone call, then confirmed by written statements and in some cases by corroborating evidence.

To assess the current state of the hearing aid market generally, PERD staff reviewed federal documents, including recent laws, regulations, and guidance, for changes that would fundamentally impact hearing aid regulations. PERD staff identified the Food and Drug Administration Reauthorization Act as creating a category for over-the-counter hearing aids and reviewed federal regulations directly impacted by this legislation and compared the requirements of the federal law (once fully implemented) to the general provisions for hearing aid dealer regulation in West Virginia.

PERD collected and analyzed the Board's complaint files, meeting minutes, annual reports, budget information, procedures for investigating and resolving complaints, and continuing education. Additionally, PERD staff requested information on hearing aid dealer complaints from the West Virginia Attorney

General's Office to identify if it had continued to handle the bulk of hearing aid dealer complaints. PERD also obtained information regarding licensing fees for hearing aid dealers and fitters in Kentucky, Maryland, Ohio, Pennsylvania, and Virginia by reviewing regulatory body websites and, where necessary, state code provisions. This information was assessed against statutory requirements in §30-1 and §6-9A of the West Virginia Code as well as the Board's enabling statute §30-26 to determine the Board's compliance with such laws. Some information was also used as supporting evidence to determine the sufficiency and appropriateness of the overall evidence.

Additionally, PERD staff reviewed regulatory body websites nationwide to determine the general prevalence of regulatory structures. Specifically, PERD sought to determine the number of states using an independent, self-supporting regulatory board with autonomous decision-making authority dedicated to the hearing aid dealer profession and the number of states that regulate hearing aid dealers and fitters, audiologists, and speech-language pathologists under the purview of a single regulatory body.

The Legislative Auditor compared the Board's actual revenues to expected revenues to assess the risk of fraud and obtain reasonable assurance that revenue figures were sufficient and appropriate. Due to inconsistencies in Board-provided data, the audit team had insufficient evidence to determine the likelihood fraud occurred. For FY 2017 through 2019, expected revenue was calculated based on the number of active licensees listed in the annual reports. Although the audit team had concerns about the accuracy of the annual reports, it accepted this listing of licensees as the most authoritative source at a given point in time. Notably, the audit team calculated expected revenue based on active licensees rather than all licensees listed. There was a significant discrepancy between active licensees and licensee counts based on secondary sources, but the count of active licensees was assumed to best reflect that year's actual number of paying licensees.

However, the expected revenue calculation includes more than a simple count of licensees. The Board is also expected to receive a certain amount of revenue from trainee permits and business licenses. As the annual reports do not contain a listing of trainees or businesses, the audit team requested records indicating the number of trainees and businesses for fiscal years 2017 through 2019. When the audit team noted certain discrepancies in the records provided and inquired as to their accuracy, records with a different number of licensees were provided. For 2017 through 2019, the audit team calculated the expected number of trainees and businesses using numbers the administrator provided based on revenue records. It should be noted the audit team could not test the veracity of these licensee lists due to insufficient record keeping, and that all calculations are based upon the best information available.

In an attempt to resolve questions about the Board's finances and identify the cause of certain discrepancies, the audit team retrieved financial data for FY2015, FY2016, and FY2020 from wvOASIS, although the scope of the audit was generally limited to FY2017 through FY2019. The audit team did not request or receive trainee or business data for FY2015 or FY2016, and instead used an average number of businesses and trainees across all years, to represent the estimated value for these years. The administrator stated the Board did not charge for testing until 2018, so the years prior do not include a calculation for expected test fees. The administrator provided a list of 2020 businesses and trainees, which the audit team used to calculate values for FY2020. However, the audit team had no data for tests administered in FY2020 and instead represented this value using the average number of tests administered.

Consequently, the precision and accuracy of expected revenue calculations are uncertain. The numbers in Table 4 represent the audit team's calculations based on the best available data for each year and category. However, all calculations are based on records provided by the Board of questionable accuracy, limiting confidence in the final calculations represented in Table 4.

The Legislative Auditor also tested the Board's expenditures for fiscal years 2016 through 2020. The test involved determining if expected or required expenditures were at least 90 percent of total expenditures. Expenditure categories not concerned expected or required include: office expenses, professional services, travel, out-of-state training and development, and expenses categorized as "miscellaneous." On average, the Board did not meet the 90 percent threshold; consequently, PERD analyzed certain expenditures and determined that out-of-state travel contributed to expected expenditures being below 90 percent.

In order to evaluate state agency websites, the Legislative Auditor conducted a literature review of government website studies, reviewed top-ranked government websites, and reviewed the work of groups that rate government websites in order to establish a master list of essential website elements. The Brookings Institute's "2008 State and Federal E-Government in the United States" and the Rutgers University's 2008 "U.S. States E-Governance Survey (2008): An Assessment of State Websites" helped identify the top ranked states in regards to e-government. The Legislative Auditor identified three states (Indiana, Maine and Massachusetts) that were ranked in the top 10 in both studies and reviewed all 3 states' main portals for trends and common elements in transparency and open government. The Legislative Auditor also reviewed a 2010 report from the West Virginia Center on Budget and Policy that was useful in identifying a group of core elements from the master list that should be considered for state websites to increase their transparency and e-governance. It is understood that not every item listed in the master list is to be found in a department or agency website because some of the technology may not be practical or useful for some state agencies. Therefore, the Legislative Auditor compared the Board's website to the established criteria for user-friendliness and transparency so that the Board of Hearing Aid Dealers and Fitters can determine if it is progressing in step with the e-government movement and if improvements to its website should be made. Additionally, PERD staff reviewed recent state legislation applicable to website content and standards.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Appendix C

Website Criteria Checklist and Points System

Website Criteria Checklist and Points System			
User-Friendly	Description	Total Points Possible	Total Agency Points
Criteria	The ease of navigation from page to page along with the usefulness of the website.	18	8
		Individual Points Possible	Individual Agency Points
Search Tool	The website should contain a search box (1), preferably on every page (1).	2 points	1
Help Link	There should be a link that allows users to access a FAQ section (1) and agency contact information (1) on a single page. The link's text does not have to contain the word help, but it should contain language that clearly indicates that the user can find assistance by clicking the link (i.e. "How do I...", "Questions?" or "Need assistance?")	2 points	2
Foreign language accessibility	A link to translate all webpages into languages other than English.	1 point	0
Content Readability	The website should be written on a 6 th -7 th grade reading level. The Flesch-Kincaid Test is widely used by Federal and State agencies to measure readability.	No points, see narrative	N/A
Site Functionality	The website should use sans serif fonts (1), the website should include buttons to adjust the font size (1), and resizing of text should not distort site graphics or text (1).	3 points	1
Site Map	A list of pages contained in a website that can be accessed by web crawlers and users. The Site Map acts as an index of the entire website and a link to the department's entire site should be located on the bottom of every page.	1 point	0
Mobile Functionality	The agency's website is available in a mobile version (1) ✓ and/or the agency has created mobile applications (apps) (1).	2 points	1
Navigation	Every page should be linked to the agency's homepage (1) and should have a navigation bar at the top of every page (1).	2 points	2

Website Criteria Checklist and Points System			
FAQ Section	A page that lists the agency's most frequent asked questions and responses.	1 point	1
Feedback Options	A page where users can voluntarily submit feedback about the website or particular section of the website.	1 point	0
Online survey/poll	A short survey that pops up and requests users to evaluate the website.	1 point	0
Social Media Links	The website should contain buttons that allow users to post an agency's content to social media pages such as Facebook and Twitter.	1 point	0
RSS Feeds	RSS stands for "Really Simple Syndication" and allows subscribers to receive regularly updated work (i.e. blog posts, news stories, audio/video, etc.) in a standardized format.	1 point	0
Transparency	Description	Total Points Possible	Total Agency Points
Criteria	A website which promotes accountability and provides information for citizens about what the agency is doing. It encourages public participation while also utilizing tools and methods to collaborate across all levels of government.	32	11
		Individual Points Possible	Individual Agency Points
Email	General website contact.	1 point	1
Physical Address	General address of stage agency.	1 point	1
Telephone Number	Correct telephone number of state agency.	1 point	1
Location of Agency Headquarters	The agency's contact page should include an embedded map that shows the agency's location.	1 point	1
Administrative officials	Names (1) and contact information (1) of administrative officials.	2 points	2
Administrator(s) biography	A biography explaining the administrator(s) professional qualifications and experience.	1 point	0

Website Criteria Checklist and Points System			
Privacy policy	A clear explanation of the agency/state's online privacy policy.	1 point	0
Complaint form	A specific page that contains a form to file a complaint (1), preferably an online form (1).	2 points	0
Budget	Budget data is available (1) at the checkbook level (1), ideally in a searchable database (1).	3 points	0
FOIA information	Information on how to submit a FOIA request (1), ideally with an online submission form (1).	2 points	0
Calendar of events	Information on events, meetings, etc. (1) ideally imbedded using a calendar program (1).	2 points	0
Mission statement	The agency's mission statement should be located on the homepage.	1 point	1
Agency history	The agency's website should include a page explaining how the agency was created, what it has done, and how, if applicable, has its mission changed over time.	1 point	0
Public Records	The website should contain all applicable public records relating to the agency's function. If the website contains more than one of the following criteria the agency will receive two points: <ul style="list-style-type: none"> • Statutes • Rules and/or regulations • Contracts • Permits/licensees • Audits • Violations/disciplinary actions • Meeting Minutes • Grants 	2 points	2
e-Publications	Agency publications should be online (1) and downloadable (1).	2 points	0

Website Criteria Checklist and Points System

Agency Organizational Chart	A narrative describing the agency organization (1), preferably in a pictorial representation such as a hierarchy/ organizational chart (1).	2 points	0
Graphic capabilities	Allows users to access relevant graphics such as maps, diagrams, etc.	1 point	1
Audio/video features	Allows users to access and download relevant audio and video content.	1 point	0
Performance measures/ outcomes	A page linked to the homepage explaining the agencies performance measures and outcomes.	1 point	0
Website updates	The website should have a website update status on screen (1) and ideally for every page (1).	2 points	1
Job Postings/links to Personnel Division website	The agency should have a section on homepage for open job postings (1) and a link to the application page Personnel Division (1).	2 points	0

Appendix D

Agency Response

Issue 1: The Board Does Not Adequately Protect the Public

The Board would like to note that this audit was interrupted by a global pandemic. We are sorry that the auditor's office felt that we were inaccessible during this time. The building the board's office is located was closed to the public for 3 weeks and the agency administrator began working from home. This resulted in having to make some delays in getting the auditor's office the needed information for the audit. As regards to cancellation of board meetings due to inclement weather or failure to establish a quorum, the board was unaware that the Secretary of State's office needed to be notified of board meeting cancellations. We will make sure to do this in the future. The board will make every effort to see that the meeting minutes contain information about the recusal of a board member, additionally the agency administrator will now proof read all minutes to make sure necessary information is included in the minutes.

The Board Does Not License All Hearing Aid Businesses as Required by Law

The Board agrees with this statement and is now making every effort to contact all business within the State of WV that dispense hearing aids and have them licensed for the upcoming fiscal year.

The Office of the Attorney General Receives and Resolves More Complaints Concerning Hearing Aids than the Board

This is not due to the Board being inaccessible. The complaints filed were consumer protection issues that the Attorney General's office resolves.

Should the Legislature Choose to Continue the Board, It Could Benefit From the Creation of a Multi-Professional Licensing Agency.

The Board agrees with this statement. This Board is located in a building that houses several other chapter 30 boards. The administrator of the Board of Hearing Aid Dealers is also an administrative assistant for the Board of Landscape Architects via a Memorandum of Understanding (MOU). There are other small licensing boards that have entered into a MOU to share staff duties and responsibilities and share office space.

In this audit and referencing Section 30-1-15, the creation of a multi-professional agency can assist in improving access to the public and the regulated community. It can also increase efficiencies and realize some economies of scale going forward.

Issue 2: The Board of Hearing Aid Dealers and Fitters Complies With Some of the General Provisions of Chapter 30 of the W.Va. Code

The Board agrees with making the needed changes to comply with the provisions stated in the audit regarding Chapter 30 of the *West Virginia Code*.

The Legislative Auditor Is Concerned by the Content of Some Meeting Minutes

The board secretary records the minutes, but the administrator will proof read the minutes and make edits so that they are accurate before being made public.

The Board Submitted a Rule Change During This Audit Which Doubles the Initial and Annual Cost of Licensure

This is correct. There has NEVER been a fee increase and the board felt that this amount was fair and comparable to surrounding states. The Legislative Rule Making Committee lowered the requested fee increase to \$120.00 instead of the requested amount that would have been \$200.00.

The Board Is Financially Self-Sufficient, But the Ending Cash Balance Has Declined to a Concerning Level

The Legislative Auditor recommends the Board reduce out-of-state travel expenditures and ensure it collects all revenue it is legally entitled to, such as from the potentially unlicensed businesses. The Board agrees with this statement and will make the needed changes. The Board would like to note that it now pays insurance premiums to BRIM. This is a relatively new expense for the board and has a total annual cost of \$2785. The Board feels that this is a contributor to the decline in the ending cash balance.

Financial Internal Controls and Recordkeeping Need to Be Improved

The Board agrees with the Legislative Auditor in recommending that they utilize an online renewal and payment process. The Board has contacted the WVSTO and is in the process of getting a website thru them that has this feature. The Board will endeavor to make sure that the records it keeps are accurate and up to date with pertinent information listed.

The Board Needs to Review Its Rules and Update Outdated Information

The Board agrees with this statement and will make every effort to update the rules.

The Board Does Not Comply with Chapter 30 Complaint Requirements That Ensure Due Process for Licensees

The Board Administrator has learned a great deal from this audit about the complaint process. The Board will make necessary changes in handling any future complaints it receives.

The West Virginia Board of Hearing Aid Dealers and Fitters' Website Requires Improvements to Enhance User-Friendliness and Transparency.

The Board agrees with this statement and has contacted the WVSTO to help them establish a website. We will take the auditor's suggestions and use them in improving our website in the areas of user-friendliness and transparency.

In Conclusion, the Board would like to thank the audit staff for making us aware of these issues. The Board will strive to make the necessary process improvements referenced in this report. The Board fully supports the consideration of a multi professional licensing agency.



WEST VIRGINIA LEGISLATIVE AUDITOR

PERFORMANCE EVALUATION & RESEARCH DIVISION

Building 1, Room W-314, State Capitol Complex, Charleston, West Virginia 25305

telephone: 1-304-347-4890 | www.legis.state.wv.us/Joint/PERD/perd.cfm | fax: 1-304-347-4939