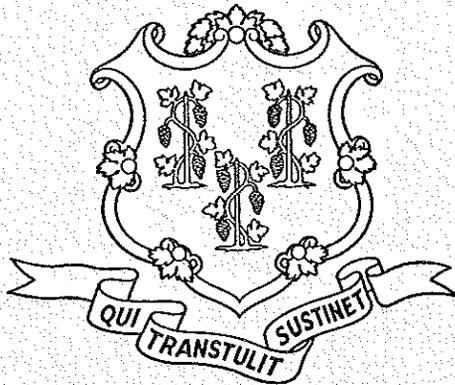


Connecticut General Assembly



Legislative Program Review and Investigations Committee

SUNSET REVIEW

Regulation of Hearing Aid Dealers

Vol. I-5

January 1, 1980

CONNECTICUT GENERAL ASSEMBLY

LEGISLATIVE PROGRAM REVIEW AND INVESTIGATIONS COMMITTEE

The Legislative Program Review and Investigations Committee is a joint, bipartisan, statutory committee of the Connecticut General Assembly. It was established in 1972 as the Legislative Program Review Committee to evaluate the efficiency and effectiveness of selected state programs and to recommend improvements. In 1975 the General Assembly expanded the Committee's function to include investigations and changed its name to the Legislative Program Review and Investigations Committee. During the 1977 session, the Committee's mandate was again expanded by the Executive Reorganization Act to include "Sunset" performance reviews of nearly 100 agencies, boards, and commissions, commencing on January 1, 1979.

The Committee is composed of twelve members, three each appointed by the Senate President Pro Tempore and Minority Leader, and the Speaker of the House and Minority Leader.

This is the first of five annual reviews emerging from the first round of "Sunset" research.

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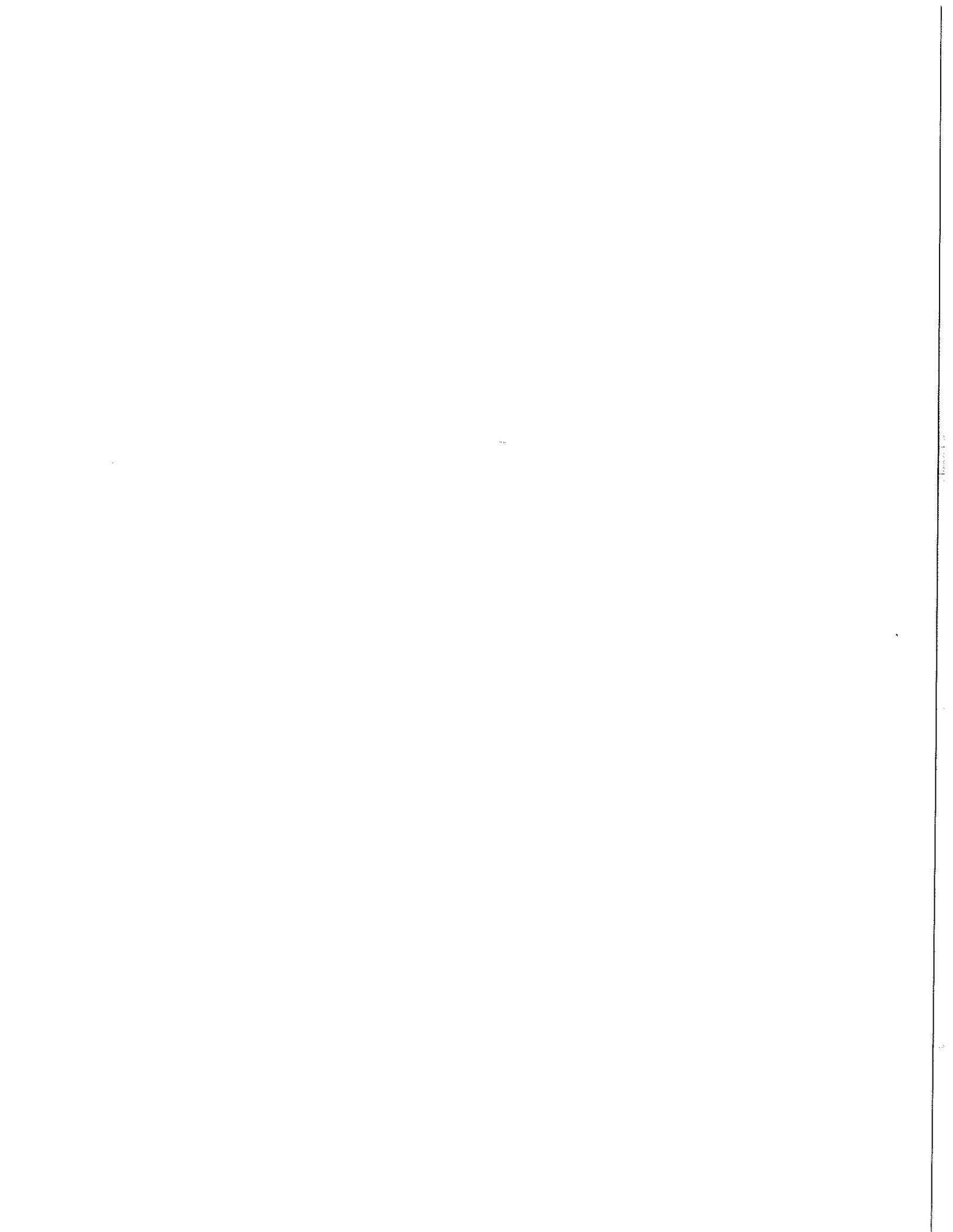
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SUNSET REVIEW 1980

REGULATION OF HEARING AID DEALERS

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REGULATION OF HEARING AID DEALERS

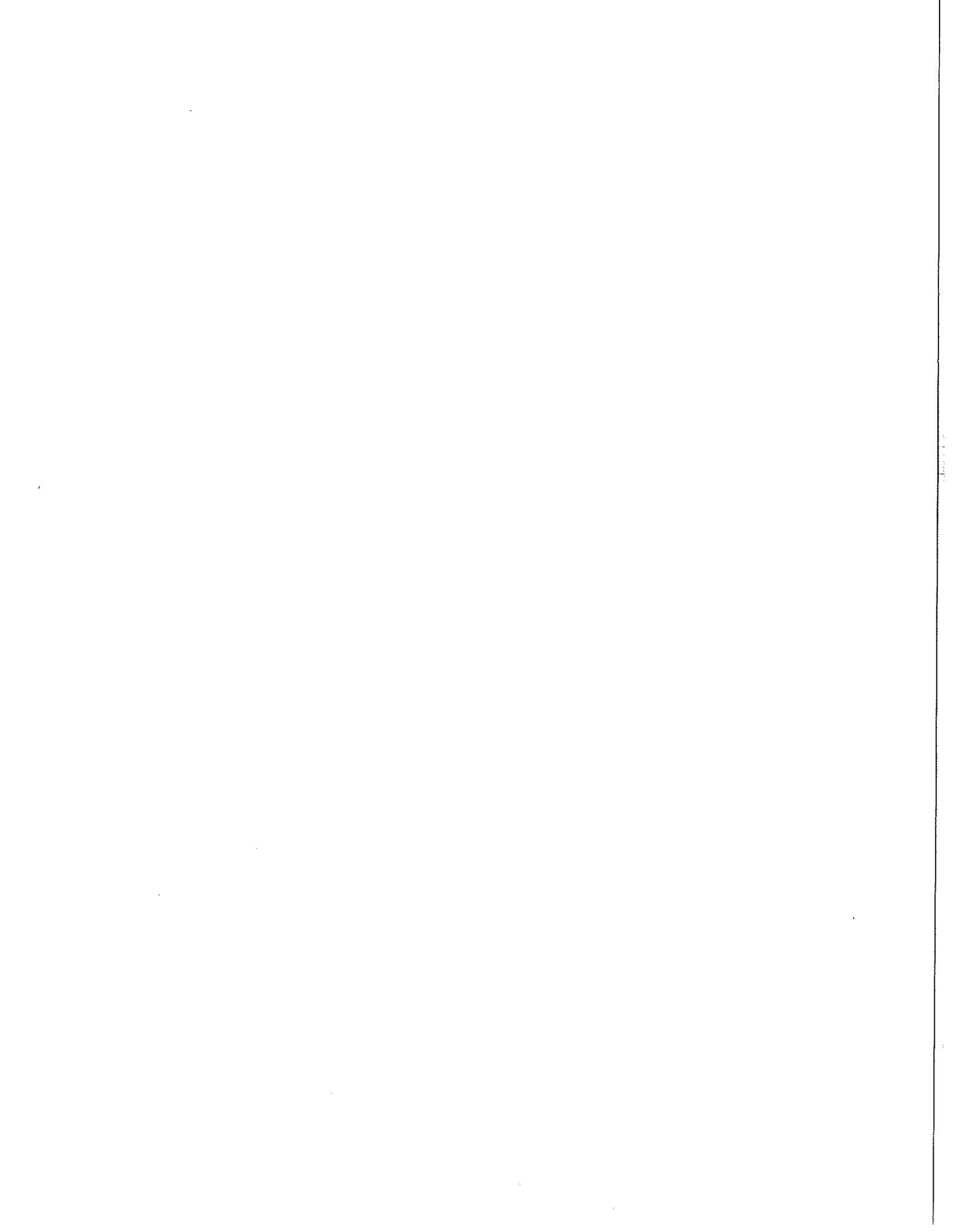
The Regulation of Hearing Aid Dealers was reviewed by the Legislative Program Review and Investigations Committee in compliance with the Sunset mandate of P.A. 77-614. The nine criteria outlined in that act (Title 2c, Chapter 28) provided the basis upon which committee decisions were made. These criteria required legislators to address three fundamental questions in evaluating the boards and commissions slated for 1980 Sunset review:

1. Is regulation of the occupation or profession necessary to protect the public from harm?
2. What is the appropriate level of regulation?
3. Who should regulate the occupation or profession and how should it be regulated?

This board-specific report is supplemental to the Sunset Review 1980 - General Report which contains the background, methods, and recommendations of Sunset Review 1980. To appreciate fully the contents of this board-specific report, it is necessary to review and refer to the General Report, particularly the section "Model Legislation" which provides a single statutory framework to be applied uniformly and consistently to all regulated entities under Sunset review.

This specific report contains the following sections:

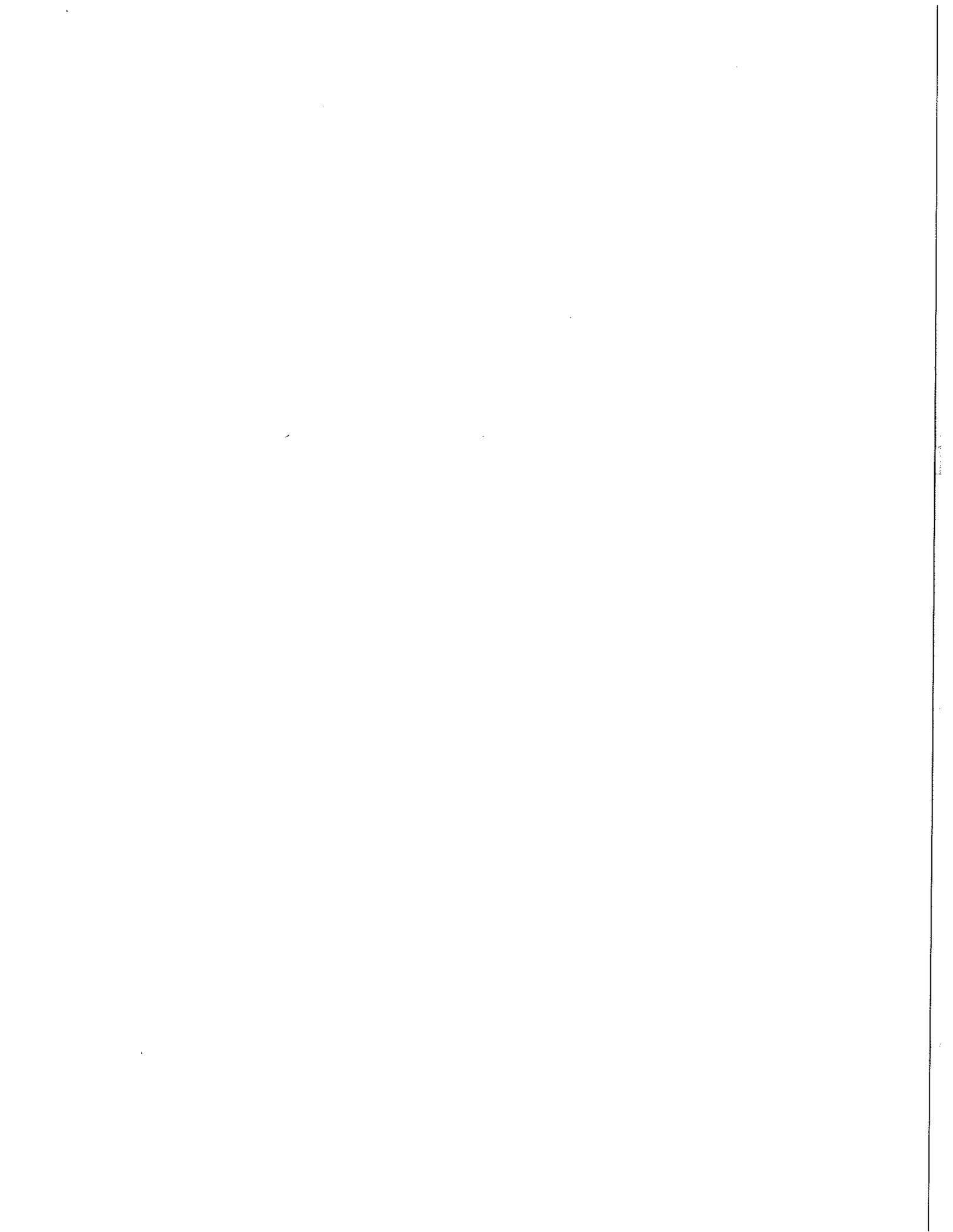
- Description of entity reviewed;
- Recommendations and discussion for entity reviewed; and
- Entity survey and analysis.



SECTION I

DESCRIPTION OF ENTITY

Definition and Background
Structure
Functions
Entry Requirements



Definition and Background

A hearing aid dealer is a person who fits or sells hearing aids. Dealers were first licensed in 1972 when the legislature recognized a need to protect the public from unqualified, incompetent and unscrupulous practitioners. The Department of Health Services (DOHS) is responsible for administering the required examination, issuing licenses, and enforcing business standards prescribed by law. The Advisory Council on Hearing Aids, created in 1972 to advise DOHS on technical aspects of the licensing functions, was abolished in 1979 as a result of the Government Reorganization Act.

Structure and Functions

To execute the regulatory functions for hearing aid dealers, the Department of Health Services is mandated to perform the following duties:

- administer the licensure examination;
- determine the subject matter and scope of the examination;
- investigate complaints against licensed hearing aid dealers and holders of temporary permits; and
- suspend or revoke licenses.

Requirements for Licensure

To obtain a license, an individual must complete a course of study approved by the Department of Health Services or a 20-week training period supervised by a licensed hearing aid dealer and pass an examination, the subject matter and scope of which is determined by the department. An applicant also must be 21 years of age, a high school graduate or its equivalent, and of good moral character.

Temporary permits are issued by the department to allow applicants to engage in the fitting and selling of hearing aids for one year either under the supervision of a licensed dealer or while enrolled in a DOHS approved program. Temporary permits are renewed after one year, if the applicant fails the exam. Renewal of a temporary license can occur only once.

In addition to achieving a minimum level of competence in order to gain a license, hearing aid dealers must also meet specified business practice standards to maintain the license.

They must comply with the following statutory provisions:

- allow the hearing aid purchaser to return the item during a 30-day period;
- advise a patient to consult a physician if the patient exhibits certain symptoms;
- require a person under the age of 18 to be examined by a physician before being sold a hearing aid;
- properly supervise those holding temporary permits;
- provide adequate information concerning their place of business and the product being sold;
- retain business records for three years;
- not violate FDA or FTC regulations; and
- not print false or misleading advertising.

Failure to comply with the standards may result in the loss or suspension of a license. In 1978, DOHS took disciplinary action against four licensed dealers out of 106 persons selling in the state. The department received and investigated 23 complaints.

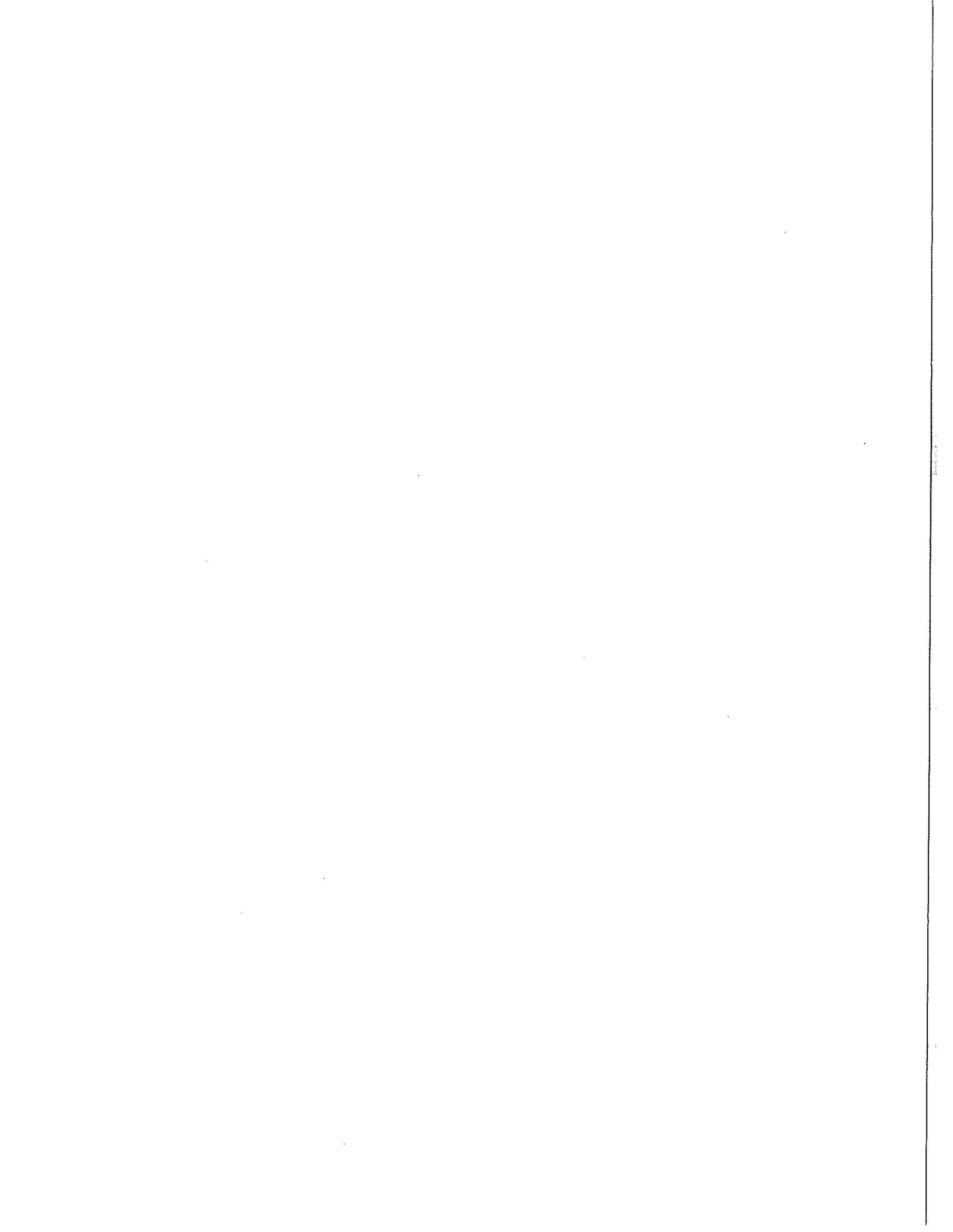
The department has promulgated specific regulations concerning the equipment and procedures each licensed dealer must comply with. He or she must test in a room having a maximum ambient noise level, employ audiometers meeting certain national standards and supply the department with a calibration certificate stating that such standards have been met, and conduct tests on each person prescribed by regulation. Failure to comply with the department regulations can result in disciplinary action and revocation of license.

DOHS issues licenses to hearing aid dealers from other states, if they meet standards equivalent to those of Connecticut. The initial cost of licensure is \$25.00 for the exam and \$15.00 for the license. A temporary permit costs \$10.00 and out-of-state applicants meeting Connecticut requirements must pay \$15.00 for a license. The license renewal fee is \$15.00.



SECTION II

RECOMMENDATIONS AND DISCUSSION



Recommendations for the Regulation of
Hearing Aid Dealers (Chapter 398)

1. Continue licensure.

Licensure has been found to be the most appropriate and necessary level of regulation for the sale and fitting of hearing aids.

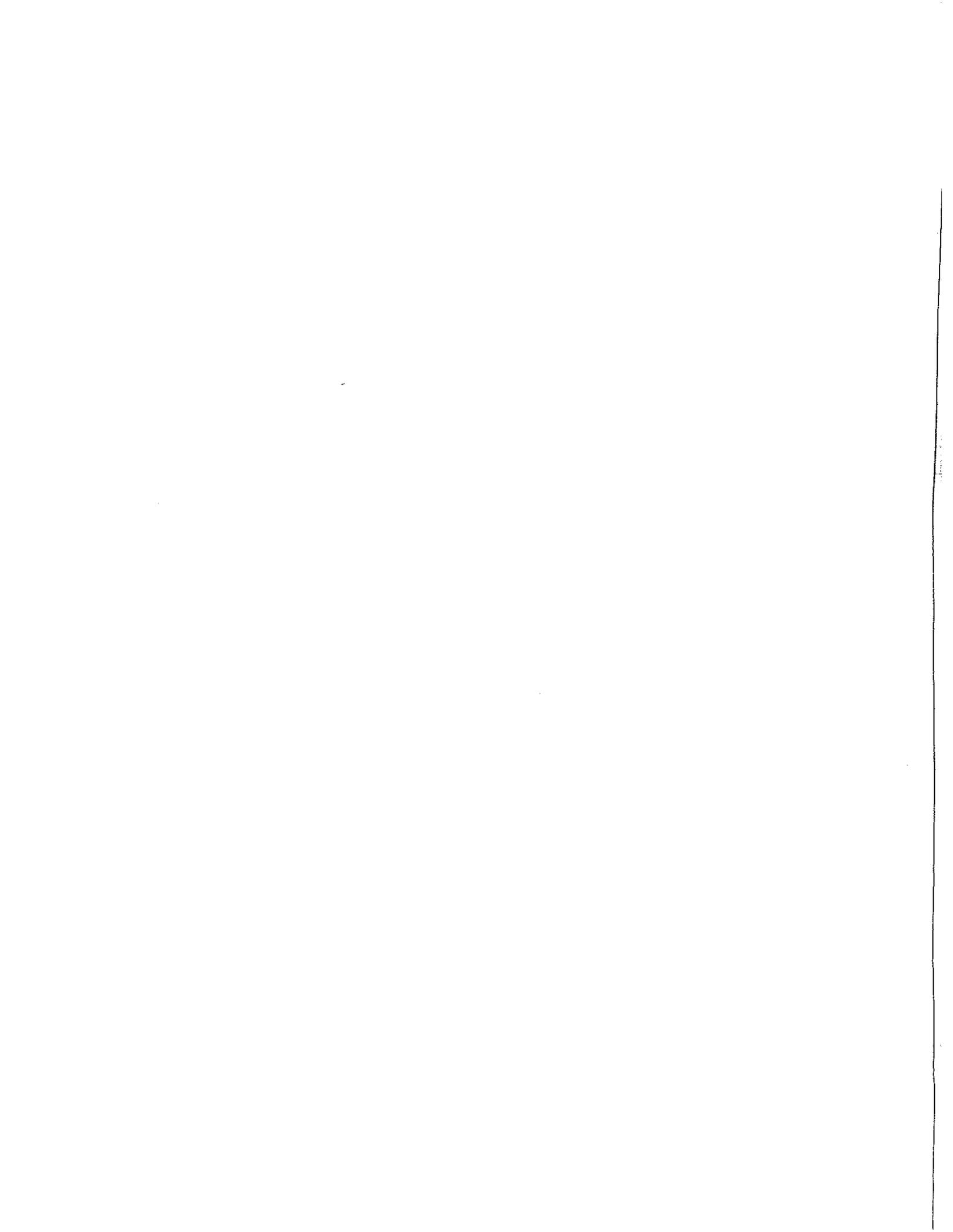
2. Transfer all statutory authority to regulate hearing aid dealers to the Department of Consumer Protection.

The Department of Consumer Protection is the most appropriate agency to regulate hearing aid dealers. It has established procedures to enforce compliance with specified business practice requirements.

The Department of Health Services should advise and assist the Department of Consumer Protection in the testing of hearing aid dealers for licensure.

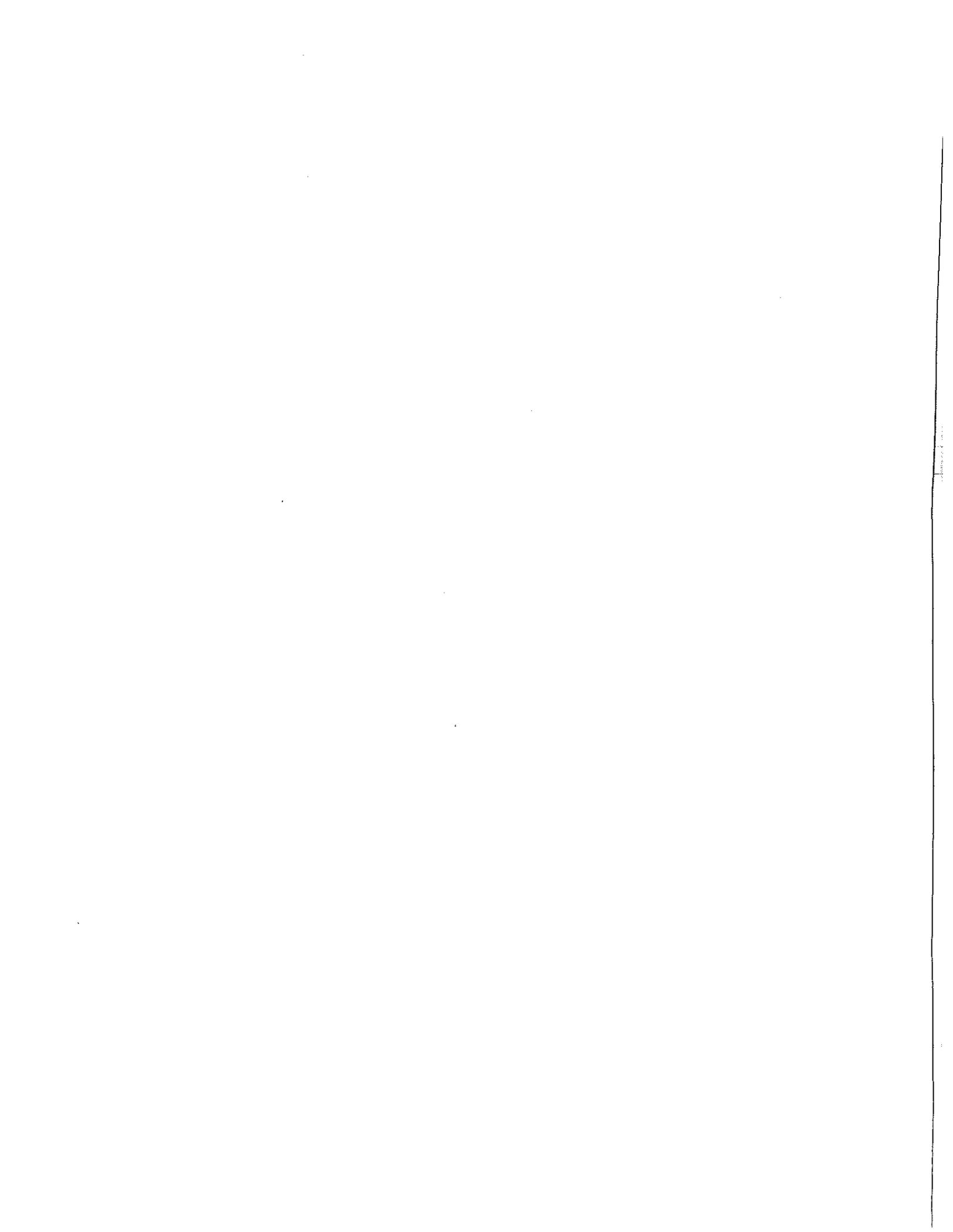
3. The Department of Consumer Protection should consider the proposed Model Legislation in the regulation of Hearing Aid Dealers.

Transferring regulatory authority from the Department of Health Services to the Department of Consumer Protection does not allow for the application of the proposed Model Legislation. However, the spirit and intent of those sections of the Model Legislation dealing with business practices, due process, occupational input, entry requirements, renewal standards, complaint procedures and disciplinary sanctions are recommended for adoption by the Department of Consumer Protection.



SECTION III

ENTITY DATA AND ANALYSIS



ENTITY DATA AND ANALYSIS

Section 2c-6 of Connecticut's Sunset Law mandates that the entity reviewed demonstrate a "public need for (its) reestablishment" and that "it has served the public interest and not merely the interests of the persons regulated." All boards, commissions and departments evaluated in Sunset Review 1980 received a questionnaire which addressed the nine statutorily specified Sunset criteria.

This questionnaire, the primary instrument used to evaluate the entity's "burden of proof," was followed by staff interviews with key board members and members of the professional associations for further clarification and amplification.

The following section contains the questionnaire sent to DOHS for the Regulation of Hearing Aid Dealers. Where appropriate, Committee staff has edited the agency response without altering or diluting the argument. Committee staff then analysed the agency response. Because of the methodological constraints posed by Sunset evaluation and implementation of Executive Reorganization occurring simultaneously, manageable quantitative data were difficult to obtain. Qualitative analysis, based on relevant information and data derived from a variety of sources, was used primarily in the Committee staff comment. This annotation appears in italics below the agency response.

1. WOULD THE TERMINATION OF LICENSING REQUIREMENTS FOR YOUR PROFESSION SIGNIFICANTLY ENDANGER THE PUBLIC HEALTH, SAFETY, OR WELFARE? PLEASE EXPLAIN.

Termination of the licensing program, now in effect for eight years, would significantly endanger the public health and safety. The law now protects persons eighteen (18) years of age and under without medical and audiological evaluations; it prohibits the sale of an aid to anyone exhibiting the eight medical disfunctions of hearing as set forth in Chapter 398, as amended and the Federal Regulations concerning the sale of hearing aids without medical evaluation; it prohibits the sale of aids to older individuals (subject to hearing loss) when an aid may not be warranted; it prohibits the sale of aids when medical or surgical intervention may preclude the use of an aid and finally it allows violators of Food and Drug Administration regulations to be prosecuted under state law.

The committee staff concurs that licensing is an appropriate form of regulation for hearing aid dealers. The statutes and regulations contain well-defined procedures for conducting a hearing test and fitting hearing aids. As noted above, the law protects the young customer by requiring a medical evaluation and the general public by requiring compliance with specified business practices. Licensure also provides an effective mechanism to insure that the hearing aid dealer is held accountable for the manner in which he conducts his business.

2. COULD THE PUBLIC BE ADEQUATELY PROTECTED BY ANOTHER STATUTE, OFFICE, OR PROGRAM? IF SO, WHICH ONE(S)?

It is my opinion as secretary of the council and a member of this department charged by law with this licensing function that no other office, program or statute could offer the same degree of public protection.

In response to consumer complaints, the legislature passed the licensing statute in 1972. The law was written to correct abuses and protect the public from incompetent and unscrupulous dealers. Evidence provided by the Department of Health Services indicates the law is accomplishing its intended purpose. Enforcement would be strengthened, however, if regulatory responsibility is shifted to the Department of Consumer Protection. Merchandising of hearing aids is consumer rather than health related and should be placed in a more appropriate state agency.

3. COULD THE PUBLIC BE ADEQUATELY PROTECTED BY A LESS RESTRICTIVE METHOD OF REGULATION THAN THE CURRENT LICENSING REQUIREMENTS, SUCH AS CERTIFICATION OR REGISTRATION? PLEASE EXPLAIN.

No, because certification and/or registration does not allow for agency procedures as set forth in a licensing program. Further, it would rule out reciprocity with the other forty (40) licensing states of this country.

The committee staff concurs with this response.

4. DOES YOUR BOARD OR COMMISSION HAVE THE EFFECT OF INCREASING THE COSTS OF GOODS OR SERVICES TO THE PUBLIC EITHER DIRECTLY OR INDIRECTLY? PLEASE EXPLAIN THE BASIS FOR YOUR ANSWER.

This licensing program may have an indirect effect of increasing the cost of goods and services in that mandated contract formats and money back trial period contracts may be passed on to the public. However, I feel that the cost is offset by the degree of undeniable protection afforded by said written contract, records and related paperwork as now mandated.

5. IF YOUR BOARD HAS THE EFFECT OF INCREASING COSTS, IS THE ADDITIONAL COST JUSTIFIED THROUGH PUBLIC BENEFITS ATTRIBUTABLE TO THE ACTIONS OF THE BOARD? PLEASE EXPLAIN.

Yes. The fact of the existence of the Advisory Council and this department and their actions under the authority of law has the effect of preventing unethical and/or illegal practices which in the long run cost the public in monies and unnecessary pain and/or harm.

Laws requiring purchase contracts between buyer and seller do add to the cost of merchandising. However, entry into the occupation involves only a minimal educational investment by the prospective candidate and, thus, has a negligible effect upon the cost of services.

Benefits from licensure can be attributed to increased consumer protection, the required correct fitting of hearing aids and the minimized probability that the consumer will purchase unnecessary merchandise.

6. IS THE EFFECTIVENESS OF YOUR BOARD OR COMMISSION HAMPERED BY EXISTING STATUTES, REGULATIONS OR POLICIES, INCLUDING BUDGET AND PERSONNEL POLICIES. IF SO, PLEASE BE SPECIFIC IN YOUR ANSWER.

The Advisory Council and this department has been hampered with the difficulty of getting regulations promulgated in this state, without which (regulations) allows the respondent in complaint cases an option of proceeding under Chapter 54 (Uniform Administrative Procedures Act) or waiting until our regulations are approved. This writer hopes that departmental regulations covering all licensing procedures will be written to eliminate said options and allow formal hearings to be scheduled promptly.

The Department of Health Services maintains that the present statute allows for the effective regulation of hearing aid dealers. The Department approves courses of study and training, examines applicants and enforces the specified service delivery procedures. Regulations implementing the statute were approved by the Regulations Review Committee on January 17, 1979, and are currently being operationalized.

7. WHAT STATUTES AND REGULATIONS IMPINGE DIRECTLY ON THE OPERATIONS OF YOUR BOARD? PLEASE LIST OR ATTACH COPIES.

To my knowledge only P.A. 77-614 may have a direct affect on the operations of the hearing aid dealers licensing procedure.

8. TO WHAT EXTENT HAVE QUALIFIED APPLICANTS BEEN PERMITTED TO ENGAGE IN THE PROFESSION(S) OR OCCUPATION(S) LICENSED BY YOUR BOARD? PLEASE COMMENT ON WAITING PERIODS, DELAYS, PAPERWORK, ETC.

Qualified applicants are permitted to be engaged in this occupation only if they are licensed or hold a temporary permit. Due to the low number of licensees in Connecticut, waiting periods and delays are minimal and paperwork is in proportion to the total volume of this program.

The committee staff has not found indication of any problems in the processing of applications.

9. WHAT ACTIONS HAS YOUR BOARD OR COMMISSION TAKEN TO INSURE COMPLIANCE WITH FEDERAL AND STATE AFFIRMATIVE ACTION POLICIES AND TO ENCOURAGE ACCESS BY WOMEN AND MINORITIES INTO YOUR PROFESSION?

This Advisory Council and this department are committed to Federal and State affirmative action policies as they stand. However, to date we have found no cause to take direct action.

Further, of all individuals licensed 26.5% are women. Minorities are encouraged to participate in the licensing program. As of this date, two minorities are licensed, one black and one Puerto Rican.

Committee staff found no contrary evidence.

10. WITHIN THE PAST FIVE (5) YEARS, WHAT CHANGES IN STATUTE, RULES OR REGULATIONS HAS YOUR BOARD OR COMMISSION RECOMMENDED WHICH WOULD BENEFIT THE PUBLIC AS OPPOSED TO LICENSEES?

See Public Act No. 77-473 attached. All material contained therein which answers the above question are marked.

A major revision of the licensing law occurred in 1977. Under previous statute, an individual was required to be licensed only if the person sold and fitted hearing aids. This was replaced with the requirement that an individual engaged in either practice be licensed. The 1977 law expanded the grounds for suspension and licensure revocation and instituted a continuing education requirement.

11. WHAT HAS YOUR BOARD OR COMMISSION DONE TO ENCOURAGE PUBLIC PARTICIPATION IN THE FORMULATION OF YOUR RULES, REGULATIONS AND POLICIES?

All regular meetings of the Advisory Council are listed with the Secretary of the State and are open to the public. Regulations are noticed in the Connecticut Law Journal and public hearings, if requested can be convened prior to final approval. Two members of the public sit on the Advisory Council, one of whom is a member of the Commission of the Deaf and Hearing Impaired.

12. WHAT HAS BEEN YOUR PROCESS THROUGH DECEMBER 31, 1978 TO RESOLVE PUBLIC COMPLAINTS CONCERNING PROFESSIONALS REGULATED BY YOUR BOARD OR COMMISSION?

All complaints are received in the Division of Medical Quality Assurance on prescribed forms; given a file number and forwarded to office of the Secretary of the Council (a member of this department) for review; investigation and if valid, a "compliance meeting is scheduled." A report of all facts are sent to the Commissioner of Health with recommendations. If warranted, a formal hearing before the Advisory Council is convened. The Council makes a recommendation which along with a transcript is sent to the Commissioner, who then issues a Memo of Decision.

The Department of Consumer Protection, the most appropriate state agency to regulate hearing aid dealers, has established procedures to enforce compliance with business practice standards.

13. WITHIN THE PAST FIVE (5) YEARS, WHAT STATUTES, RULES, OR REGULATIONS HAS YOUR BOARD OR COMMISSION PROPOSED OR ADVOCATED TO PROTECT YOUR PROFESSION FROM THE LICENSURE OF UNQUALIFIED PERSONS?

Along with changes seen in P.A. 77-473 (attached) the Council has proposed regulations which at this writing are before the Standing Legislative Regulation Review Committee and the office of the Attorney General for approval and promulgation.

See comment under question #10.

