

Statement to Prospective Hearing Aid Purchaser

Pursuant to Oregon Revised Statute and Oregon Administrative Rule, prior to consummation of the sale of a hearing aid, a person dealing in hearing aids shall deliver to the prospective purchaser a written statement, signed by the person dealing in hearing aids. The statement shall include, but not be limited to, all the following information listed in this statement. The licensee must retain a copy of this statement for a minimum period of seven (7) years after the last visit of the client.

Hearing Aid Specialist Information

LAST NAME:	FIRST NAME:	MIDDLE INITIAL:
HAS LICENSE NUMBER:	LICENSE EXPIRATION DATE:	
NAME OF PRINCIPLE PLACE OF BUSINESS:		
PHYSICAL ADDRESS OF BUSINESS:		
CITY:	STATE:	ZIP:
MAILING ADDRESS (IF DIFFERENT FROM ABOVE):		
CITY:	STATE:	ZIP:
BUSINESS PHONE:	BUSINESS EMAIL:	

Prospective Purchaser Information

LAST NAME:	FIRST NAME:	MIDDLE INITIAL:
PHYSICAL RESIDENTIAL ADDRESS:		
CITY:	STATE:	ZIP:
MAILING ADDRESS (IF DIFFERENT FROM ABOVE):		
CITY:	STATE:	ZIP:
PERSONAL PHONE:	PERSONAL EMAIL:	

Consultation Recommendation

It is desirable that a person seeking help with a hearing problem (especially for the first time) consult an ear doctor and obtain a clinical hearing evaluation. Although hearing aids are often recommended for hearing problems, another form of treatment may be necessary.

Specifications of Hearing Aid(s) Applicable to this Sale

DATE OF SALE:	NUMBER OF HEARING AIDS SOLD TO THIS PURCHASER ON THIS DATE:		
HEARING AID MAKE:	MODEL NUMBER:	SERIAL NUMBER:	
HEARING AID MAKE:	MODEL NUMBER:	SERIAL NUMBER:	

IN THE SECTION BELOW, INDICATE THE CONDITION OF THE HEARING AID(S) SOLD:

THE HEARING AID DELIVERED TO THE PURCHASER FOR THE RIGHT EAR IS:	<input type="checkbox"/> NEW	<input type="checkbox"/> USED	<input type="checkbox"/> RECONDITIONED
THE HEARING AID DELIVERED TO THE PURCHASER FOR THE LEFT EAR IS:	<input type="checkbox"/> NEW	<input type="checkbox"/> USED	<input type="checkbox"/> RECONDITIONED

Provisions of Oregon Revised Statutes 646A.460 to 646A.476 and 694.042

646A.460 Definitions for ORS 646A.460 to 646A.476. As used in ORS 646A.460 to 646A.476:

- (1) "Assistive device" or "device" means:
 - (a) Wheelchairs and scooters of any kind, including other aids that enhance the mobility or positioning of an individual using a wheelchair or scooter of any kind, such as motorization, motorized positioning features and the switches and controls for any motorized features; and
 - (b) Hearing aids as defined in ORS 694.015.
- (2) "Assistive device system" means a system of assistive devices. An "assistive device system" may be a single assistive device, or each component part of the assistive device system may be considered a separate assistive device.
- (3) "Authorized dealer" means a dealer authorized by a manufacturer to sell or lease assistive devices manufactured or assembled by the manufacturer.
- (4) "Collateral costs" means expenses incurred by a consumer in connection with the repair of a nonconformity, including the cost of delivering the assistive device to the manufacturer or dealer for repair and obtaining an alternative device if no loaner was offered.
- (5) "Consumer" means any of the following:
 - (a) The purchaser of an assistive device, if the device was purchased from a dealer or manufacturer for purposes other than resale;
 - (b) A person to whom the assistive device is transferred for purposes other than resale, if the transfer occurs before the expiration of an express warranty applicable to the device;
 - (c) A person who may enforce the warranty; or
 - (d) A person who leases an assistive device from a dealer under a written lease.
- (6) "Current value of the written lease" means the total amount for which the lease obligates the consumer during the period of the lease remaining after its early termination, plus the dealer's early termination costs and the market value of the assistive device at the lease expiration date if the lease sets forth that market value, less the dealer's early termination savings.
- (7) "Dealer" means a person who is in the business of selling or leasing assistive devices.
- (8) "Demonstrator" means an assistive device that would be new but for its use, since its manufacture, only for the purpose of demonstrating the device to the public or prospective buyers or lessees.
- (9) "Early termination cost" means any expense or obligation that a dealer incurs as a result of both the termination of a written lease before the termination date set forth in the lease and the return of an assistive device to a manufacturer under ORS 646A.464 (4). "Early termination cost" includes a penalty for prepayment under a finance arrangement.
- (10) "Early termination savings" means any expense or obligation that a dealer avoids as a result of both the termination of a written lease before the termination date set forth in the lease and the return of an assistive device to a manufacturer under ORS 646A.464 (4). "Early termination savings" includes the interest charge that the dealer would have paid to finance the device or, if the dealer does not finance the device, the difference between the total amount for which a lease obligates the consumer during the period of the lease term remaining after the early termination and the present market value of that amount at the date of the early termination.
- (11) "Individual with a disability" means any individual who is considered to have a mental or physical disability or impairment for the purposes of any law of this state or of the United States, including any rules or regulations adopted under those laws.
- (12) "Loaner" means an assistive device, provided to the consumer for use by the user free of charge, that need not be new or be identical to or have functional capabilities equal to or greater than those of the original assistive device, but that meets the following conditions:
 - (a) It is in good working order;
 - (b) It performs at a minimum the most essential functions of the original assistive device, in light of the disability of the user; and
 - (c) Any differences between it and the original assistive device do not create a threat to safety.
- (13) "Manufacturer" means a person who manufactures or assembles assistive devices and agents of that person, including an importer, a distributor, factory branch, distributor branch and any warrantor of the manufacturer's device, but does not include a dealer.
- (14)(a) "Nonconformity" means a condition or defect that substantially impairs the use, market value or safety of an assistive device and that is covered by an express warranty applicable to the device or to a component of the device.
 - (b) "Nonconformity" does not include a condition or defect that:
 - (A) Is the result of abuse or neglect of the device by a consumer;
 - (B) Is the result of an unauthorized modification or alteration of the device by a consumer if the modification or alteration substantially affects the performance of the device; or

(C) For hearing aids, is the result of normal use of the hearing aid and when the condition or defect could be resolved through fitting adjustments, cleaning or proper care.

(15)(a) "Reasonable allowance for use" means:

(A) When an assistive device has been sold to a consumer, no more than the amount obtained by multiplying the full purchase price of the device by a fraction, the denominator of which is the number of days in the useful life of the device and the numerator of which is the number of days that the device was used before the consumer first reported the nonconformity to the manufacturer or any authorized dealer.

(B) When an assistive device has been leased to a consumer, no more than the amount obtained by multiplying the total amount for which the written lease obligates the consumer by a fraction, the denominator of which is the useful life of the device and the numerator of which is the number of days that the device was used before the consumer first reported the nonconformity to the manufacturer or any authorized dealer.

(b) As used in this subsection, the useful life of the assistive device is the greater of:

(A) Five years; or

(B) Such other time that the consumer may prove to be the expected useful life of assistive devices of the same kind.

(16) "Reasonable attempt to repair" means, within the terms of an express warranty applicable to an assistive device:

(a) The same nonconformity is subject to repair at least two times by the manufacturer or any authorized dealer and the nonconformity continues; or

(b) The assistive device is out of service, by reason of repair or correction, for an aggregate of at least 30 days after notification to the manufacturer or any authorized dealer because of the nonconformity.

(17) "User" means an individual with a disability who, by reason thereof, needs and actually uses the assistive device. [Formerly 646.482]

646A.462 Express warranty; duration. (1) A manufacturer who sells or leases an assistive device, including a demonstrator, to a consumer, either directly or through a dealer, shall furnish, at a minimum, an express warranty that the device shall be free from any nonconformity. The manufacturer shall set forth the warranty fully in readily understood language and shall clearly identify the party making the warranty, the rights that the warranty gives the consumer and how the consumer can exercise the rights.

(2) If the manufacturer does not furnish the express warranty described in subsection (1) of this section, the manufacturer shall be considered to have provided an express warranty that the device shall be free from any nonconformity.

(3) The duration of the warranty shall be not less than one year from the date of first delivery of the assistive device to the consumer. [Formerly 646.484]

646A.464 Repair of assistive device. (1)(a) If a new assistive device or demonstrator does not conform to an applicable express warranty and the consumer reports the nonconformity to the manufacturer, the dealer who sold or leased the device or any authorized dealer and makes the assistive device available for repair before one year after first delivery of the device to the consumer, the nonconformity shall be repaired at no charge to the consumer. If the consumer notifies the manufacturer, the manufacturer is jointly obligated together with any of its authorized dealers.

(b) A repair for purposes of this subsection includes a repair that must take place after the expiration of one year after first delivery of the assistive device to the consumer, provided that the defect occurred prior to the expiration of the warranty period and the consumer notified the manufacturer within 30 days after expiration of the period.

(2)(a) Except as provided in paragraphs (b) and (c) of this subsection, each manufacturer of an assistive device sold or leased in this state shall:

(A) Maintain or cause to be maintained in this state sufficient service and repair facilities to carry out the terms of the warranty described in ORS 646A.462; and

(B) At the time of the sale or lease, provide the consumer with the names, addresses and telephone numbers of all such service and repair facilities and of all authorized dealers.

(b) If the manufacturer does not provide service and repair facilities in this state, the consumer may return the nonconforming assistive device to the dealer who sold or leased the device or to any authorized dealer for replacement, service or repair in accordance with the terms and conditions of the express warranty. The replacement, service or repair shall be at the option of the dealer to whom the device is returned. If that dealer does not replace the nonconforming device or does not effect the service or repair of the device in accordance with the warranty, the dealer shall reimburse the consumer in an amount equal to the purchase or lease price paid, less a reasonable allowance for use by the consumer.

(c) Each manufacturer who, with respect to a new assistive device sold within this state, does not provide a service or repair facility within this state is liable for the following amounts to any dealer who incurs obligations in giving effect to the express warranty described in ORS 646A.462:

(A) In the event of replacement, in an amount equal to the cost to the dealer of the replaced assistive device and any cost of transporting the device, plus a reasonable handling charge;

(B) In the event of service or repair, in an amount equal to that which would ordinarily be received by the dealer for rendering such service or repair, including actual and reasonable costs of the service or repair and the costs of transporting the assistive device, if such costs are incurred, plus a reasonable profit; or

(C) In the event of reimbursement under paragraph (b) of this subsection, in an amount equal to that reimbursed to the consumer plus a reasonable handling or service charge.

(3) For purposes of this section, a consumer reports a nonconformity when the consumer:

(a) Makes any communication, written or oral, that describes the problem with the assistive device, or that may be reasonably understood as an expression of dissatisfaction with any aspect of the operation of the device. The communication need only indicate in some way the nature of the problem, such as an indication of the functions that the device is not performing or performing unsatisfactorily for the consumer, and need not be in technical language nor attempt to state the cause of the problem; and

(b) Does not refuse to make the assistive device available to the manufacturer, the dealer who sold or leased the device or any authorized dealer for repair.

(4)(a) It shall be presumed that the consumer has made the assistive device available to the manufacturer, the dealer who sold or leased the device or an authorized dealer for repair if the consumer allows the manufacturer or dealer to take the device from the consumer's residence or other location where the user customarily uses the device.

(b) The consumer shall be required to deliver the device to another location only upon a showing that it would be a substantially greater hardship for the manufacturer, the dealer who sold or leased the device or any authorized dealer to take the device from the consumer's residence or other location where the user customarily uses the device than for the consumer to deliver the device.

(c) If the consumer must deliver the device to another location in order to enable the manufacturer to repair the device, the manufacturer shall reimburse the consumer for the costs of the delivery.

(5)(a) A person required to repair an assistive device under this section shall provide the consumer a loaner if the absence of a loaner would be a threat to the safety of the user or if the assistive device is out of service for more than seven calendar days.

(b) Paragraph (a) of this subsection applies whether or not the rights of the consumer provided by ORS 646A.466 (1) or (2) have arisen and in addition to the remedies relating to collateral costs provided by ORS 646A.460 to 646A.476. [Formerly 646.486]

646A.466 Replacement or refund after attempt to repair. If a nonconformity develops in a new assistive device or demonstrator, the manufacturer shall, after a reasonable attempt to repair the device or demonstrator, at the option of the consumer:

(1) In the case of a sale, refund to the consumer and to any holder of a perfected security interest as their interest may appear, the full purchase price plus any finance charge or sales tax paid by the consumer at the point of sale and collateral costs, less a reasonable allowance for use;

(2) In the case of a lease, refund to the dealer and to any other holder of a perfected security interest, as their interest may appear, the current value of the lease and refund to the consumer the amount that the consumer paid under the lease plus any collateral costs, less a reasonable allowance for use; or

(3) Provide a conforming replacement. [Formerly 646.488]

646A.468 Procedures for replacement or refund. (1) To receive the refund or replacement described in ORS 646A.466, the consumer shall offer to the manufacturer of the assistive device, the dealer who sold or leased the device or any authorized dealer to transfer possession of the device having the nonconformity. The manufacturer shall:

(a) Make the refund within 14 calendar days after the consumer offers to transfer possession;

(b) Make the replacement within 30 calendar days after the consumer offers to transfer possession; or

(c) Provide the consumer a loaner for use if the replacement is not made within 14 calendar days after the consumer offers to transfer possession. The loaner may be used until replacement is made.

(2) The manufacturer may require as a condition of making a timely refund or replacement described in ORS 646A.466 that the consumer deliver possession of the original assistive device to the manufacturer, the dealer who sold or leased the device or any authorized dealer and sign any documents necessary to transfer title and possession of the device, or necessary to provide evidence of the transfer, to any person designated by the manufacturer.

(3) Subsection (2) of this section applies only if:

(a) The time and place of the mutual activities described in subsection (2) of this section are readily accessible to the consumer; and

(b) The manufacturer provides the consumer written notice in 12-point bold type stating in clear and understandable language the time and place of the mutual activities and directing the consumer to meet at that time and place. The notice must be received by the consumer no later than four business days before the time of the mutual activities.

(4) A person shall not enforce a lease against the consumer for use of an assistive device during any period of nonconformity or after the consumer returns the device to the manufacturer as described by this section.

646A.470 Sale or lease of returned assistive device. (1) An assistive device returned by a consumer or dealer in this state, or by a consumer or dealer in another state under a similar law of that state, may not be sold or leased again in this state unless full disclosure of the reasons for return is made to the prospective buyer or lessee.

(2) If a sale or lease is made in violation of subsection (1) of this section, a consumer who bought or took the lease of the assistive device shall have the rights of a consumer of a new device provided by ORS 646A.466, without regard to whether there is a nonconformity or to whether there has been a reasonable attempt to repair the device. The following paragraphs apply to a sale or lease under this section:

(a) If the consumer chooses the refund option described in ORS 646A.466, there shall be no deduction from the full purchase price in calculating the refund under ORS 646A.466;

(b) The rights described in this subsection run against the person who last sold or transferred the assistive device to any other person, whether or not the other person is a consumer, so long as the last person to sell or transfer the device had knowledge of the previous return of the device and did not provide the disclosure required by subsection (1) of this section; and

(c) The rights described under this subsection must be declared and exercised by a consumer within two years after the consumer knows of the previous return and can identify the person against whom the rights run. [Formerly 646.492]

646A.472 Dispute resolution. (1) A consumer shall have the option of submitting any dispute arising under ORS 646A.460 to 646A.476 to a dispute resolution procedure. A manufacturer shall submit to the dispute resolution procedure.

(2) The procedure shall provide at a minimum the right of each party to present its case, to be in attendance during any presentation made by the other party and to rebut or refute such presentation. The individuals conducting the dispute resolution procedure must be objective.

(3) A decision resulting from the dispute resolution procedure shall be binding on the manufacturer.

(4) The records of the results of disputes settled under this section shall be submitted to the Department of Justice if the department requests them and shall be available to any person who makes a request for the records free of cost within 10 business days of the person's request. The department may review all records created under this section to determine whether or not the procedure and decisions comply with the provisions of ORS 646A.460 to 646A.476.

(5) The Department of Justice shall establish a roster of dispute resolution providers for consumers seeking to resolve disputes with manufacturers or to assert their rights under this section. [Formerly 646.494]

646A.474 Applicability of other laws; waiver. ORS 646A.460 to 646A.476 shall not be construed as limiting rights or remedies available to a consumer under any other law. Any waiver by a consumer of rights provided by ORS 646A.460 to 646A.476 is void. [Formerly 646.496]

646A.476 Civil action for damages; attorney fees; limitation on actions. (1) In addition to pursuing any other remedy, a consumer may bring a private cause of action to recover damages caused by a violation of any provision of ORS 646A.460 to 646A.476. The court shall award a consumer who prevails in such an action pecuniary loss and noneconomic damages, together with costs, disbursements, reasonable attorney fees and any equitable relief that the court determines is appropriate. Pecuniary loss caused by a violation of ORS 646A.460 to 646A.476 shall include collateral costs, beginning at the time of the violation, whether or not the consumer acquired the rights provided by ORS 646A.466. If a consumer has submitted a dispute arising under ORS 646A.460 to 646A.476 to a dispute resolution procedure as described in ORS 646A.472, the consumer may not bring a private cause of action under this section relating to that dispute until a decision resulting from the dispute resolution procedure has been issued or until the consumer has withdrawn the dispute from the dispute resolution procedure.

(2) If a consumer appeals to a court from a decision resulting from the dispute resolution procedure described in ORS 646A.472 because the consumer was not granted one of the remedies by ORS 646A.460 to 646A.476, and the consumer is granted one of the remedies by the court, the consumer shall be awarded:

(a) Up to three times the amount of any damages awarded if the court finds that the party opposing the consumer did not act in good faith in the dispute resolution procedure;

(b) Reasonable attorney fees; and

(c) Any fees incurred in the dispute resolution procedure and any judicial action.

(3) If the party opposing the consumer is the prevailing party in an action brought under subsection (1) or (2) of this section, the party opposing the consumer shall be entitled to reasonable attorney fees if the court finds the action to have been frivolous.

(4) Any action brought under this section shall be commenced during the period beginning one year after the date the assistive device was originally delivered to the consumer and ending two years later. [Formerly 646.498]

694.042 Right to rescind hearing aid purchase; grounds; notice of rescission; time limit; refund. (1) In addition to any other rights and remedies the purchaser may have, including rights under ORS 646A.460 to 646A.476, the purchaser of a hearing aid shall have the right to rescind the transaction if:

(a) The purchaser for whatever reason consults with a physician licensed under ORS chapter 677 to practice medicine who specializes in diseases of the ear or with a physician assistant licensed under ORS 677.505 to 677.525 who specializes in diseases of the ear, or consults with an audiologist not licensed under this chapter and not affiliated with anyone licensed under this chapter and with a physician licensed under ORS chapter 677 to practice medicine or with a physician assistant licensed under ORS 677.505 to 677.525, subsequent to purchasing the hearing aid, and the physician or physician assistant advises such purchaser against purchasing or using a hearing aid and in writing specifies the medical reason for the advice;

(b) The seller, in dealings with the purchaser, failed to adhere to the practice standards listed in ORS 694.142, or failed to provide the statement required by ORS 694.036;

(c) The fitting of the hearing instrument failed to meet current industry standards; or

(d) The licensee fails to meet any standard of conduct prescribed in the law or rules regulating fitting and dispensing of hearing aids and this failure affects in any way the transaction which the purchaser seeks to rescind.

(2) The purchaser of a hearing aid shall have the right to rescind the transaction, for other than the seller's breach, as provided in subsection (1)(a), (b), (c) or (d) of this section only if the purchaser returns the product and it is in good condition less normal wear and tear and gives written notice of the intent to rescind the transaction by either:

(a) Returning the product with a written notice of the intent to rescind sent by certified mail, return receipt requested, to the licensee's regular place of business; or

(b) Returning the product with a written notice of the intent to rescind to an authorized representative of the company from which it was purchased.

(3) The notice described in subsection (2) of this section shall state that the transaction is canceled pursuant to this section. The notice of intent to rescind must be postmarked:

(a) Within 30 days from the date of the original delivery; or

(b) Within specified time periods if the 30-day period has been extended in writing by both parties. The consumer's rescission rights can only be extended through a written agreement by both parties.

(4) If the conditions of subsection (1)(a), (b), (c) or (d) of this section and subsection (2)(a) or (b) of this section have been met, the seller, without further request and within 10 days after the cancellation, shall issue a refund to the purchaser. However, the hearing aid specialist may retain a portion of the purchase price as specified by rule by the Health Licensing Office when the purchaser rescinds the sale during the 30-day rescission period. At the same time, the seller shall return all goods traded in to the seller on account of or in contemplation of the sale. The purchaser shall incur no additional liability for the cancellation. [1975 c.673 §6; 1985 c.227 §6; 1993 c.133 §2; 1999 c.81 §3; 2003 c.547 §77; 2005 c.648 §91; 2013 c.568 §113; 2014 c.45 §74]

Terms of Any Guarantee or Express Warranty Other Than Those Stated in Oregon Revised Statutes 646A.460 to 646A.476 and 694.042 above.

The terms of any guarantee or express warranty, other than those included in 646A.460 to 646A.476 and 694.042 above and not otherwise identified in the contract for sale, are as follows (attach additional pages if necessary):

Procedure for filing a complaint

A complaint may be filed with the Oregon Health Licensing Office (HLO), Advisory Council on Hearing Aids, by completing a complaint form that can be found on the Health Licensing Office forms page at:

<https://www.oregon.gov/oha/PH/HLO/Pages/Regulatory-Compliance.aspx>, and sending the completed form to:

Attn: Regulatory Operations Division
Health Licensing Office
1430 Tandem Ave. NE, Suite 180
Salem, OR 97301-2192

Affirmation for Receipt of "Statement to Prospective Hearing Aid Purchaser"

By my signature below, I affirm that I provided a "Statement to Prospective Hearing Aid Purchaser" identified on the statement.

Licensee Signature:

Date:

By my signature below, I affirm that I have received a "Statement to Prospective Hearing Aid Purchaser" as part of the contract for sale of the hearing aid(s) identified on the Statement, and that I have read and understand the information contained in the Statement, which includes provisions of Oregon Revised Statutes (law) 646A.460 to 646A.476 and 694.042, including express warranty, rights, and responsibilities in the purchase or return of the hearing aid(s) to the seller.

Purchaser Signature:

Date: