

ANTHONY G. BROWN
Attorney General

CANDACE MCLAREN LANHAM
Chief of Staff

CAROLYN QUATTROCKI
Deputy Attorney General



WILLIAM D. GRUHN
Chief
Consumer Protection Division

STATE OF MARYLAND
OFFICE OF THE ATTORNEY GENERAL
CONSUMER PROTECTION DIVISION

Writer's Fax No.
410.576.6571

Writer's Direct Dial No.
410.576.6513

February 21, 2023

TO: The Honorable Joseline Pena-Melnyk, Chair
House, Health and Government Operations Committee
FROM: Office of the Attorney General, Health Education and Advocacy Unit
RE: HB1145 – Health Insurance Hearing Aids for Adults – Coverage: **Support with Letter of Information**

The Health Education and Advocacy Unit of the Attorney General's Office supports the intent of HB1145 which amends Md. Code Ann., Ins. §15-838 to expand the current requirement for private individual and group issuers in the state to provide hearing aid benefits for minor children for each hearing-impaired ear every 36 months, requiring the same coverage for adults. The bill cures a presumptively discriminatory benefit design (benefits based on age) in the non-grandfathered individual and small-group markets (*see* [MIA bulletin 15-33](#)) and offers the benefit to adults in the grandfathered and large group markets.¹

In considering HB1145, we ask the Committee to take note of the FDA's recent approval of over-the-counter hearing aids. We recommend clarifying the definition of hearing aids in 15-838 and 838.1 to make clear whether the General Assembly intends the statute to apply to over-the-counter hearing aids as regulated by Title VII, Sec. 709 of the FDA Reauthorization Act of 2017, 21 USC 360j(q).

Over-the-counter (OTC) hearing aid is defined in 21 CFR 800.30 as an air-conduction hearing aid that does not require implantation or other surgical intervention, and is intended for use by a person age 18 or older to compensate for perceived mild to moderate hearing impairment. The device, through tools, tests, or software, allows the user to control the hearing aid and customize it to the user's hearing needs. The device

¹ The Maryland benchmark plan includes hearing aids as an essential health benefit (EHB), generally prohibiting the \$1,400 limit for group health benefit plans, and all non-grandfathered individual benefit plans. 45 CFR § 147.126 (generally prohibiting annual limits on EHBs).

may use wireless technology or may include tests for self-assessment of hearing loss. The device is available over the counter, without the supervision, prescription, or other order, involvement, or intervention of a licensed person, to consumers through in-person transactions, by mail, or online, provided that the device satisfies the requirements in this section.

More information about the new over-the-counter hearing aid rules can be found at <https://www.fda.gov/news-events/press-announcements/fda-finalizes-historic-rule-enabling-access-over-counter-hearing-aids-millions-americans> and <https://www.federalregister.gov/documents/2022/08/17/2022-17230/medical-devices-ear-nose-and-throat-devices-establishing-over-the-counter-hearing-aids>.

Currently, § 15-838(b)(2) of the Insurance Article requires coverage of hearing aids “prescribed, fitted, and dispensed by a licensed audiologist.” Section 15-838.1, which would be added by SB 397, does not appear to contain any similar requirement. It would be helpful for the General Assembly to repeat the limitations contained in the current statute or to expressly provide that over-the-counter hearing aids must be covered.