

NOTICE OF PUBLIC RULES HEARING

DATE: Thursday, May 16, 2019
TIME: 11:00 a.m.
LOCATION: Ohio Department of Health
35 E. Chestnut Street
Columbus, Ohio 43215
ROOM: ODH Basement Training Room A

In accordance with *Chapter 119* of the Revised Code (R.C.), the Director of the Ohio Department of Health announces a Public Hearing at the date and time listed above to hear comments regarding the following action:

Ohio Revised Code (O.A.C.) Chapter 3701-42-08 – Abuse of the WIC Program; Sanctions.

On July 10, 2018 Ohio WIC received notice of a USDA Departmental Final Rule change. This rule change requires Ohio Administrative Code 3701-42-08 to be amended to reflect the Civil Monetary Penalty (CMP) Inflation Adjustment for 2018. Under this final rule, maximum CMPs have increased to \$15,041 for each violation with a maximum per investigation of \$60,161. In accordance with §3.91(a)(2), these maximums were required to be applied to violations occurring after March 14, 2018.

The following amendments are being proposed:

3701-42-08 – Amendments made to Section(s) 3701-42-08 (L)(2) and (O)(3) and (4) - Under this USDA final rule, maximum CMPs have increased to \$15,041 for each violation with a maximum per investigation of \$60,161. In accordance with §3.91(a)(2), these maximums were required to be applied to violations occurring after March 14, 2018. The USDA requires ODH to provide the contracted vendors with notice of possible sanctions for a violation of the OAC and/or federal regulations governing the program. This regulation meets that requirement to provide notice of the sanctions including the amount of a civil money penalty that could be levied. This amendment is based on a USDA requirement. Businesses that voluntarily decide to be a WIC vendor are only impacted by this amendment if they have violated the program rules. A civil money penalty is the alternative to a mandatory contract termination and disqualification from the program when contract and/or OAC violations are found. The Director can impose a civil money penalty when it is determined that doing so is in the best interest of the program. A copy of the OAC is provided to each vendor at authorization and is also available on the Ohio WIC website. Each vendor receives training on the OAC and can also call and speak with a Vendor Specialist staff member via the 1-800-282-3435 number.

Ohio Revised Code (O.A.C.) Chapter 3701-40-01 – 3701-40-10 – Universal Hearing Screening for Newborns and Infants.

The rule package outlines regulations for birthing hospitals, freestanding birthing centers, local health departments, and providers of follow-up hearing evaluations in the Infant Hearing Program, which oversees Ohio's statewide birth to three Early Hearing Detection & Intervention Program administered by the Department of Health. Early Hearing Detection and Intervention refers to the practice of screening every newborn for hearing loss prior to hospital discharge. Infants not passing the screening receive a diagnostic hearing evaluation before three months of age and, when necessary, are enrolled in early intervention programs by six months of age. The Infant Hearing Program oversees and monitors the program for Ohio infants and toddlers (birth to three) diagnosed with permanent hearing loss. The enrollment of early intervention services fulfills Part C of the Individuals with Disabilities Education Act. Ohio infants and toddlers identified with permanent hearing loss meet the eligibility requirements established in rules adopted under Ohio's revised code 3701.61 Help Me Grow.

- Rule 3701-40-01 (Definitions) provides definitions for any and all language used in the rule package with specific programmatic meaning.
- Rule 3701-40-02 (Hearing screening requirements for freestanding birthing centers) outlines requirements for freestanding birthing facilities only to ensure compliance to universal newborn hearing screening requirements.

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- Rules 3701-40-03 (Notification Requirement) outlines the identification of a hearing screening coordinator at each location and reduces the reporting burden placed on boards of health.
- Rule 3701-40-04 (Objections to Hearing Screening) was amended to mirror language within the Ohio Revised Code.
- Rule 3701-40-05 (Qualifications of personnel conducting hearing screenings) clarifies requirements for training, completion of training prior to screening, and documentation of annual training.
- Rule 3701-40-06 (Hearing screening and equipment requirements for hospitals) outlines requirements for birthing hospitals only to ensure compliance to universal newborn hearing screening requirements.
- Rule 3701-40-07 (Reimbursement for hearing screening) no revisions recommended for five-year review.
- Rule 3701-40-08 (Diagnostic hearing evaluations) recommends protocols for diagnostic hearing evaluations of referred infants following non-pass screening results, clarifies reporting of diagnostic evaluation results to parents and to Ohio Department of Health.
- Rule 3701-40-09 (Hearing screening tracking and follow-up) removed reference to the regional infant hearing program.
- Rule 3701-40-10 (Ohio department of health training and materials) requires the Department to also provide training regarding the joint infant hearing committee and expands entities who may receive educational materials.

Hearing and Contact Information:

At the hearing, people affected by the proposed action may appear and be heard in person or accompanied by an attorney. They may present their positions, arguments, or contentions orally or in writing; may offer witnesses; and may present evidence showing that the proposed rule, if adopted or effectuated, will be unreasonable or unlawful.

To aid in getting visitors through building security, any persons intending to testify at the hearing or planning to observe are encouraged to pre-register by writing to the Office of the General Counsel, Ohio Department of Health, 246 North High Street, 7th Floor, Columbus, Ohio 43215, or by phone to (614) 466-4882, or send an e-mail to odhrules@odh.ohio.gov.

Copies of the proposed rule will be available on the Register of Ohio website:

<http://www.registerofohio.state.oh.us/jsps/publicdisplayrules/searchRuleNumber.jsp> approximately a half day after the rule is filed, or from the Office of the General Counsel, Ohio Department of Health (<https://www.odh.ohio.gov/rules/drafts/drafts.aspx>).

Please e-mail any written comments to ODHrules@odh.ohio.gov by 5:00 p.m. on May 14, 2019.