

**MEMORANDUM**

**TO:** Kaye Norton, Ohio Department of Health

**FROM:** Sydney King, Regulatory Policy Advocate

**DATE:** February 21, 2014

**RE:** **CSI Review – Ohio Hearing Aid Assistance Program (OAC 3701-45-01, 3701-45-02, 3701-45-03, and 3701-45-04)**

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On behalf of Lt. Governor Mary Taylor, and pursuant to the authority granted to the Common Sense Initiative (CSI) Office under Ohio Revised Code (ORC) section 107.54, the CSI Office has reviewed the abovementioned administrative rule package and associated Business Impact Analysis (BIA). This memo represents the CSI Office's comments to the Agency as provided for in ORC 107.54.

**Analysis**

This rule package consists of four new rules being proposed by the Ohio Department of Health (ODH). The rules provide the program framework for hearing aid assistance. The rule package was filed with the CSI Office on November 9, 2013, and the comment period for the rules closed on December 9, 2013. Ten comments were received during the public comment period.

The 130<sup>th</sup> General Assembly earmarked funding in order to assist families with incomes below 400% of the Federal Poverty Level with the purchase of hearing aids for children under the age of twenty-one. The rules were drafted to regulate the disbursement of the funds and provide the criteria for family applications, sliding scale fee schedules, and provider participation.

The BIA states stakeholders were involved with enacting the earmark and the early drafting of the rules. Stakeholders from key state agencies and boards, industry associations, and medical practitioners provided input on the draft rules. During the public comment period, the rules received ten comments. Several audiologists commented to support the rules. Other comments requested clarity and provided suggestions for amendments.

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The Hearing Healthcare Alliance of Ohio submitted a letter to ODH addressing the adverse impacts to hearing aid fitters and dealers. The BIA only identifies audiologists as the impacted business community and lists the adverse impacts as the administrative costs associated with explaining the application to the family, collecting the application form, completing the provider request for the hearing aids, gathering supporting documentation, and submitting the application forms to the administrator. However, the initially-submitted rules limited provider participation to audiologists. According to the Hearing Healthcare Alliance of Ohio, hearing aid fitters and dealers are qualified to assist families in this program and the rules would restrict and impact their customer care.

The CSI Office participated in several discussions with ODH, representatives of hearing aid fitters and dealers, and representatives of audiologists to address the adverse impact identified by the Hearing Healthcare Alliance of Ohio. During this review, the CSI office found that licensed hearing aid fitters and dealers' scope of practice qualified them as a provider in this program. However, federal guidelines<sup>1</sup> suggest children (age 18 and under) with hearing loss be directed to an audiologist because audiologists are qualified by training and experience to assist in the evaluation and rehabilitation of a child with a hearing loss. Based on the rationale used to establish these guidelines, the CSI Office recommended ODH include hearing aid fitters and dealers as providers to eligible children ages eighteen to twenty-one. After an internal review of the recommendation, ODH amended the rules to include hearing aid fitters and dealers as providers to eligible children ages eighteen to twenty-one. The amendments also included a requirement for audiologists and hearing aid fitters and dealers to present a written statement signed by a licensed physician that states that the individual's hearing loss has been medically evaluated and the individual may be considered a candidate for a hearing aid. According to ODH, this maintains the integrity of the program by ensuring the hearing loss is not due to other medical reasons.

After ODH amended the draft rules to include licensed hearing aid fitters and dealers, the CSI Office determined that the rule satisfactorily meets the standards espoused by the CSI Office, and the purpose of the rule is justified.

### **Recommendation**

During the review, the CSI Office recommended ODH include hearing aid fitters and dealers as providers to eligible children ages eighteen to twenty-one. ODH incorporated this recommendation into the revised draft rules submitted on February 18, 2014.

### **Conclusion**

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<sup>1</sup> 21 C.F.R. § 801.420

Based on the above comments, the CSI Office concludes that the Department should proceed with the formal filing of this rule package with the Joint Committee on Agency Rule Review.

cc: Mark Hamlin, Lt. Governor's Office