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**TO:** The Honorable Melony Griffith, Chair  
Senate Finance Committee

**FROM:** Office of the Attorney General, Health Education and Advocacy Unit

**RE:** SB0397 – 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 SB0397 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 up to \$1,400 for each hearing-impaired ear every 36 month, 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.

In considering SB 397, the General Assembly should be mindful 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 over-the-counter 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 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.

cc: Sponsor, Jason Gallion