

**COUNCIL OF THE DISTRICT OF COLUMBIA
COMMITTEE ON HEALTH
COMMITTEE REPORT
1350 Pennsylvania Avenue, N.W., Washington, D.C. 20004**

TO: All Councilmembers

FROM: Councilmember Vincent C. Gray, Ward 7
Chairperson, Committee on Health



DATE: July 1, 2020

SUBJECT: Report on Bill 23-0565, "Hearing Aid Sales Amendment Act of 2020"

The Committee on Health, to which Bill 23-0565 was referred, reports favorably thereon and recommends approval by the Council.

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I. BACKGROUND & NEED

The stated purpose of Bill 23-0565 is to expand the definition of medical clearance to include a licensed physician, and to provide that a person 18 years of age or older may purchase a hearing aid without having had a medical examination or hearing test evaluation by written waiver. The "Hearing Aid Sales Amendment Act of 2020" was introduced on December 2, 2019 by Chairman Phil Mendelson and Councilmember Gray.

Current legislation requires that a hearing test occur within 3 months of dispensing of hearing aids, in addition to requiring medical clearing from an ENT (Ear-Nose-Throat) physician for individuals 18 and older. There is also no current option for an adult patient to sign a waiver to opt out of medical clearance unless there is an extenuating circumstance. This bill is needed to extend the 3-month time allowance to 6 months and allow medical clearance to come from a general licensed physician and not an ENT specifically. This will allow for more much needed time between diagnostic hearing evaluation appointments and hearing aid fitting appointments. This legislation will also bring the District in line with the US Food and Drug Administration,

many insurers, and others states with hearing aid legislation that also agree on a 6-month time frame.

II. LEGISLATIVE CHRONOLOGY

December 02, 2019	B23-0565 Introduced by Chairman Mendelson, and Councilmember Gray at Office of the Secretary_
December 03, 2019	Referred to Committee of the Whole, and Committee on Health
December 06, 2019	Notice of Intent to Act on B23-0565 Published in the District of Columbia Register
December 13, 2019	Re-Referral published.
January 10, 2020	Notice of Public Hearing Published in the District of Columbia Register
January 27, 2020	Public Hearing on B23-0565
July 1, 2020	Consideration and vote on B23-0565

III. POSITION OF THE EXECUTIVE

Dr. Anjali Talwalkar, MPH, Senior Deputy Director of the Community Health Administration, Department of Health, testified on behalf of the Executive. Dr. Talwalkar expressed that children's health insurance coverage for hearing-related services in the District likely aligns with the bill for initial evaluation of hearing loss, but may not be consistent with standards of maintenance care, particularly with the role of audiologists in hearing care and hearing aid assessments. Additionally, while an audiological evaluation from a qualified health professional is recommended for adults, it is not necessary for that professional to be a licensed physician in every circumstance. Initial evaluation by an otolaryngologist or licensed physician is warranted to identify if underlying medical causes of hearing loss are present such as infection, injury, or tumors; however this level of physician care is often not required to manage adult onset hearing loss after underlying causes are ruled out, and thus should not be mandated broadly.

Dr. Talwalkar testified that the Department of Health does not want to create barriers for children and adults who need an assistive device along with routine monitoring and re-evaluations of their hearing to ensure continued effectiveness of the device. She concluded her testimony by stating her desire to work with the Council to achieve the goals of the legislation and ensure that all District residents receive comprehensive care.

IV. COMMENTS OF ADVISORY NEIGHBORHOOD COMMISSIONS

The committee received no testimony or comments from Advisory Neighborhood Commissions.

V. LIST OF WITNESSES AND SUMMARIES OF TESTIMONY

Public Witnesses

1. Elizabeth Marcinkus, Au.D., CCC-A Audiologist

Executive Witness

Dr. Anjali Talwalkar Senior Deputy Director, Community Health Administration, Department of Health

Elizabeth Marcinkus, Au.D., CCC-A, Audiologist, testified in support of the bill, specifically the increase in time from 3 months to 6 months that diagnostic data is valid. She expressed that this falls in line with the practice of most states and will reduce unnecessary testing and barriers that can add to the hearing aid fitting process. Dr. Marcinkus however expressed that the requirement for medical clearance by an otolaryngologist can be overly restrictive and strongly encouraged the committee to consider adding the option for a patient to waive this medical evaluation for personal or religious beliefs.

VII. IMPACT ON EXISTING LAW

Bill 23-0565 amends Chapter 40 of Title 28 of the District of Columbia Official Code by expanding applicability from “otolaryngologist” to “otolaryngologist or licensed physician”, and extending the time needed to have received a hearing aid test from 3 to 6 months. The bill also amends the law by establishing that no registrant shall fit, offer for sale, or sell a hearing aid to a minor under 18 years of age unless, within the preceding 6 months, the minor has received a medical clearance and a hearing test evaluation; or an individual 18 years of age or older unless, within the preceding 6 months, the individual has:

1. Received a medical clearance and a hearing test evaluation;
2. Received a written statement based upon a medical examination and hearing test evaluation by a licensed audiologist that concludes that the patient may benefit from a hearing aid and that there are no medical conditions to contraindicate the use of a hearing aid; or
3. Signed a waiver form created or approved by the Department of Health stating that the individual has a history of stable hearing loss that does not require medical management and has waived having a medical examination and hearing test evaluation.

VII. FISCAL IMPACT

Funds are sufficient in the fiscal year 2020 through fiscal year 2023 budget and financial plan to implement the bill.

VIII. SECTION BY SECTION ANALYSIS

- Section 1 States the short title of Bill 23-0565
- Section 2 Amends Chapter 40 of Title 28 of the District of Columbia Official Code by striking the phrase “an otolaryngologist,” and inserting the phrase “an otolaryngologist or licensed physician” in its place. This section also establishes that no registrant shall fit, offer for sale, or sell a hearing aid to:
- A minor under 18 years of age unless, within the preceding 6 months, the minor has received a medical clearance and a hearing test evaluation; or
 - An individual 18 years of age or older unless, within the preceding 6 months, the individual has:
 - Received a medical clearance and a hearing test evaluation.
 - Received a written statement based upon a medical examination and hearing test evaluation by a licensed audiologist that concludes that the patient may benefit from a hearing aid and that there are no medical conditions to contraindicate the use of a hearing aid; or
 - Signed a waiver form created or approved by the Department of Health stating that the individual has waived having a medical examination and hearing test evaluation.
- Section 3 States that the Mayor shall issue rules to implement the provisions of this act.
- Section 4 Adopts the fiscal impact statement.
- Section 5 States the Act will take effect following Mayoral approval and Congressional review, and publication in the District of Columbia Register.

IX. COMMITTEE ACTION

Bill 23-0565, is the “Hearing Aid Sales Amendment Act of 2020.” The meeting was called to order at 9:10 a.m. after a quorum was present consisting of Committee Chairperson Vincent C. Gray and Councilmembers Brianne K. Nadeau, David Grosso and Mary M. Cheh. Bill 23-0565 was the fourth item on the agenda.

After discussing the chronology and purpose of the bill, Chairperson Gray gave brief remarks, and opened the floor for discussion. Hearing no discussion, Chairperson Gray moved

the print and report, with leave for staff to make technical and editorial changes. The vote on the print and report were unanimous. (Chairperson Gray and Councilmembers Grosso, Cheh and Nadeau voting “aye”, Councilmember Todd being absent) The meeting adjourned at 9:43 a.m.

X. ATTACHMENTS

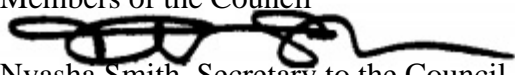
- A. Secretary’s Notice for Bill 23-0565
- B. Bill 23-0565
- C. Hearing Notice and Witness List
- D. Copies of Written Testimony
- E. Fiscal Impact Statement
- F. Legal Sufficiency Memorandum
- G. Committee Print of Bill 23-0565

ATTACHMENT A

COUNCIL OF THE DISTRICT OF COLUMBIA
1350 Pennsylvania Avenue, N.W.
Washington D.C. 20004

Memorandum

To : Members of the Council

From : 
Nyasha Smith, Secretary to the Council

Date : December 11, 2019

Subject : Re-Referral of Proposed Legislation

Notice is given that the attached proposed legislation was introduced in the Office of the Secretary on Monday, December 2, 2019. Copies are available in Room 10, the Legislative Services Division.

TITLE: "Hearing Aid Sales Amendment Act of 2019", B23-0565

INTRODUCED BY: Chairman Mendelson and Councilmember Gray

The Chairman is re-referring this legislation to the Committee on Health with comments from the Committee of the Whole.

Attachment

cc: General Counsel
Budget Director
Legislative Services

ATTACHMENT B

Vincent C. Gray
Councilmember Vincent C. Gray

Phil Mendelson
Chairman Phil Mendelson

A BILL

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To amend the Hearing Aid Dealers and Consumer Act of 1977 to require a minor to receive medical clearance from an otolaryngologist and a hearing test evaluation before a registrant can fit, offer for sale, or sell a hearing aid to the minor, and to require an adult to receive medical clearance from an otolaryngologist or a licensed physician and a hearing test evaluation before a registrant can fit, offer for sale, or sell a hearing aid to the adult.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA,

That this act may be cited as the "Hearing Aid Sales Amendment Act of 2019".

Sec. 2. The Hearing Aid Dealers and Consumer Act of 1977, effective October 26, 1977 (D.C. Law 2-33; D.C. Official Code § 28-4001 *et seq.*), is amended as follows:

(a) Section 2(5) (D.C. Official Code § 28-4001(5)) is amended by striking the phrase "an otolaryngologist," and inserting the phrase "an otolaryngologist or licensed physician," in its place.

(b) Section 5(a) (D.C. Official Code § 28-4004(a)) is amended to read as follows:

"(a) No registrant shall fit, offer for sale, or sell a hearing aid to:

1 “(1) A minor under 18 years of age unless, within the preceding 6 months,
2 the minor has received medical clearance from an otolaryngologist and a hearing test evaluation;
3 or

4 “(2) An individual 18 years or older unless, within the preceding 6
5 months, the individual has received medical clearance and a hearing test evaluation.”.

6 Sec. 3. Fiscal impact statement.

7 The Council adopts the fiscal impact statement in the committee report as the fiscal
8 impact statement required by section 4a of the General Legislative Procedures Act of 1975,
9 approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

10 Sec. 4. Effective date.

11 This act shall take effect following approval by the Mayor or in the event of veto by the
12 Mayor, action by the Council to override the veto, a 30-day period of congressional review as
13 provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December
14 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1), and publication in the District of
15 Columbia Register.

ATTACHMENT C

**COUNCIL OF THE DISTRICT OF COLUMBIA
COMMITTEE ON HEALTH
NOTICE OF PUBLIC HEARING
1350 PENNSYLVANIA AVE., N.W., WASHINGTON, D.C. 20004**

REVISED

**COUNCILMEMBER VINCENT C. GRAY, CHAIRPERSON
THE COMMITTEE ON HEALTH**

ANNOUNCES A PUBLIC HEARING ON

**BILL 23-0547, THE “NATIVE AMERICAN BIRTH RECOGNITION AMENDMENT ACT OF
2019”**

BILL 23-0565, THE “HEARING AID SALES AMENDMENT ACT OF 2019”

BILL 23-0584, THE “PREGNANCY AS A QUALIFYING EVENT ACT OF 2019”

**MONDAY, JANUARY 27, 2020
10:00 A.M., ROOM 412, JOHN A. WILSON BUILDING
1350 PENNSYLVANIA AVENUE, N.W.
WASHINGTON, D.C. 20004**

Councilmember Vincent C. Gray, Chairperson of the Committee on Health, announces a Public Hearing on Bill 23-0547, the “Native American Birth Recognition Amendment Act of 2019”, Bill 23-0565, the “Hearing Aid Sales Amendment Act of 2019”, and Bill 23-0584, the “Pregnancy as a Qualifying Event Act of 2019.” The hearing will be held on Monday, January 27, 2020, at 10:00 a.m., in Room 412 of the John A. Wilson Building. **This notice has been revised to reflect the addition of Bill 23-0565 and Bill 23-0584 to the hearing agenda.**

Bill 23-0547, the “Native American Birth Recognition Amendment Act of 2019”, would allow birth certificate recognition of Native American tribal enrollment. It allows an individual to request a replacement birth certificate that includes recognition of Native American tribal enrollment.

Bill 23-0565, the “Hearing Aid Sales Amendment Act of 2019”, requires both minors and adults to receive a medical clearance from an otolaryngologist and receive a hearing test evaluation before an entity can fit, offer for sale, or sell a hearing aid to them. Adults may also receive clearance from a licensed physician.

Bill 23-0584, the “Pregnancy as a Qualifying Event Act of 2019”, requires health insurers to provide a special enrollment period after commencement of a pregnancy.

The Committee invites the public to testify at the hearing. Those who wish to testify should contact Malcolm Cameron, Committee Legislative Analyst at (202) 654-6179 or mcameron@dccouncil.us, and provide your name, organizational affiliation (if any), and title with the organization, by 5:00 p.m. on Thursday, January 23, 2020. Witnesses should bring 15 copies of their written testimony to the hearing. The Committee allows individuals 3 minutes to provide oral testimony

in order to permit each witness an opportunity to be heard. Additional written statements are encouraged and will be made part of the official record. Written statements may be submitted by e-mail to mcameron@dccouncil.us or mailed to: Council of the District of Columbia, 1350 Pennsylvania Ave., N.W., Suite 113, Washington D.C. 20004.

Witnesses who anticipate needing language interpretation, or require sign language interpretation, are requested to inform the Committee on Health of the need as soon as possible, but no later than Monday, January 20, 2020. We will make every effort to fulfill timely requests, however requests received after this date may not be fulfilled and alternatives may be offered.

**COUNCIL OF THE DISTRICT OF COLUMBIA
COMMITTEE ON HEALTH
WITNESS LIST - PUBLIC HEARING
1350 PENNSYLVANIA AVE., N.W., WASHINGTON, D.C. 20004**

**COUNCILMEMBER VINCENT C. GRAY, CHAIRPERSON
THE COMMITTEE ON HEALTH**

ANNOUNCES A PUBLIC HEARING ON

BILL 23-0565, THE “HEARING AID SALES AMENDMENT ACT OF 2019”

BILL 23-0584, THE “PREGNANCY AS A QUALIFYING EVENT ACT OF 2019”

**MONDAY, JANUARY 27, 2020
10:00 A.M., ROOM 412, JOHN A. WILSON BUILDING
1350 PENNSYLVANIA AVENUE, N.W.
WASHINGTON, D.C. 20004**

WITNESS LIST

BILL 23-0565, THE “HEARING AID SALES AMENDMENT ACT OF 2019”

Public Witnesses

- | | |
|------------------|----------------|
| 1. Nicole Jordan | Public Witness |
|------------------|----------------|

Executive Witness

- | | |
|----------------------|--|
| Dr. Anjali Talwalkar | Senior Deputy Director, Community Health
Administration, Department of Health |
|----------------------|--|

BILL 23-0584, THE “PREGNANCY AS A QUALIFYING EVENT ACT OF 2019”

Public Witnesses

- | | |
|-----------------------------|--|
| 1. Sara Imershein, MD, PLLC | Vice Chair, American College of
Obstetricians and Gynecologists – DC
Chapter |
| 2. Rebecca Barson | Public Witness |

Executive Witness

Mila Kofman

Executive Director, Health Benefit
Exchange Authority

ATTACHMENT D

January 27, 2020

Council of the District of Columbia
1350 Pennsylvania
Ave., N.W., Suite 113
Washington D.C. 20004

Dear Councilmember Gray:

As a practicing audiologist in the District of Columbia, I support the changes made in Bill 23-0565 "The Hearing Aid Sales Amendment Act of 2019, specifically the increase in time (from 3 months to 6 months) that diagnostic data is valid. This falls in line with the practice of most states and will reduce unnecessary testing and barriers that can add to the hearing aid fitting process. Thank you.

However, I still find the requirement for medical clearance by an otolaryngologist to be overly restrictive and strongly encourage you to consider adding the option for a patient to waive this medical evaluation for personal or religious beliefs. While I fully support the need for a medical evaluation when patients have diagnostic data that is suggestive of medical issues, the fact is that the majority of individuals with hearing loss do not have a medical condition that can be treated by an ENT. Requiring these individuals, many of whom have hearing loss associated with the normal aging process, to see yet another medical provider adds unnecessary time, cost, and barriers. To this fact, in December 2016, the FDA released a recommendation that medical clearance and even the use of waivers should be removed for the adult population. The report indicated that these practices delayed and sometimes prevented patients from moving forward with obtaining hearing aids.

Audiologists have specialized training (doctoral degree) in the diagnosis and management of hearing loss and deafness. We are bound by the evidence-based and ethical guidelines of our professional organizations and state/district licensing boards. We are highly skilled in identifying red-flags for medical concerns and knowing when to refer clients for further medical evaluation. The current practice requires me to refer clients that I do not think warrant medical evaluation, also placing a burden on the ENT practices in the area – many of whom have a multiple week/month wait for appointments.

On a personal note, I work as a clinical audiologist at the Gallaudet University Hearing & Speech Center. While we see clients from the entire Washington DC Metropolitan area, a large portion of my clients are from within the Deaf community, many of whom have deafness from birth or early childhood and have been wearing hearing aids their entire lives. It is common for individuals to upgrade hearing aids every 3-5 years and I am often asked why DC law requires them to see an ENT before obtaining new hearing aids, when they've been medically cleared for hearing aid use since childhood. I wish I had a good answer for them, but I don't. With the large

Deaf/HOH population in DC, one would think that the system would support my clients instead of making them jump through hoops to increase their accessibility in a hearing world.

I am very appreciative of the time you have provided me today. As a clinician who is impacted directly by this legislation, I think it is moving in the right direction. However, allowing for the client to sign a waiver for the medical clearance requirement will further enhance this bill and allow for a more streamlined process for the majority of clients.

Sincerely,

A handwritten signature in black ink, appearing to read "Elizabeth Marcinkus". The signature is fluid and cursive, with a large initial "E" and "M".

Elizabeth Marcinkus, Au.D., CCC-A
DC Audiology License #000116

Supporting Testimony for Hearing Aid Sales Amendment Act of 2019

Terms to know:

- **Audiologist:** Licensed hearing health care professional who specializes in the diagnosis and treatment of hearing loss and balance disorders. The minimum degree requirement for this field is a clinical doctorate.
- **Ear-Nose-Throat physician/otolaryngologist:** a physician who specializes in ear, nose and throat problems. SOME ENT's have additional training in medical and surgical management of dizziness, hearing loss, and tumors of the ear.
- **Medical clearance for hearing aids:** A written statement showing a physician has examined the patient and there are no medical contraindications to hearing aid use and the patient can be medically cleared for hearing aid use.
- **DCRSA:** District of Columbia Department on Disability Services Rehabilitation Services Administration. Will pay for diagnostic audiology/hearing appointments and hearing devices/technology for employment purposes. Requires pre-authorization of appointments and hearing devices/technology

Concerns with Current Legislation:

- (1) Requires hearing test to occur within 3 months of the dispensing of hearing aids
- (2) Requires medical clearance from an ENT (Ear-Nose-Throat) physician for individuals 18+. It should be noted that medical clearance CANNOT come from a primary care physician/general practitioner.
- (3) There is no option for an ADULT patient to sign a waiver to opt out of medical clearance UNLESS there is a LEGITIMATE religious reason the patient CANNOT/WILL NOT see a physician.

Amendment of the Current Legislation:

The new legislation will remedy points (1) and (2) by extending the 3-month time allowance to 6-months and by allowing medical clearance to come from a general licensed physician and not an ENT specifically.

Support for the amendment:

- (1) The time period extension from 3 to 6 months for will allow for more much needed time between diagnostic hearing evaluation appointments and hearing aid fitting appointments.
 - a. This allows the District of Columbia to save money through DCRSA and Medicaid, which often requires more than 3 months to authorize an appointment and/or hearing devices/technology (including hearing aids). Thus, the 3-month period lapses and DC has to pay for further appointments.
 - b. The FDA, professionals in the field, many insurances, and other states with hearing aid legislation agree that 6 months is an adequate window.

- c. Will provide patients with needed time to discuss options with their family, consider the financial burden, try different products, shop around, and gather other important information to make a decision regarding hearing aids.
- (2) The change from requiring ENT specific medical clearance to allow for medical clearance to be provided by a licensed physician, including primary care physician/general practitioner, for those 18+, will open access to obtaining hearing aids for, reduce time/cost of obtaining hearing aids, and increase likelihood of hearing/hearing aid related appointments in the District of Columbia.
- a. Medical clearances require the physician to look in the car of the patient and look at the hearing evaluation to ensure there is not medical contraindication for hearing aids. This can be done by a primary care physician/general practitioner. If there is a contraindication, both the Audiologist and primary care physician are trained to refer to an ENT for further follow up.
 - b. Many patients who require hearing aids are 65+, covered by Medicare, and on a fixed income. As a result, hearing aids are already costly. Requiring an extra physician's appointment to see an ENT forces the Medicare patient to pay more for the appointment, and possibly for extra transport to/from the appointment. This cost just increases every time the individual needs new hearing aids. A medical clearance from a primary care physician or another physician would not require an extra appointment.
 - c. Many ENT's, especially in DC, are seeing special cases of ear, nose, and throat disorders or are performing surgery. Their busy schedule is often booked out and it can take months for a patient to get an appointment, especially if they have Medicare. This increases the time for the patient to get hearing aids. This also can waste the ENT's time, who is a specialty physician with more urgent appointments.
 - d. The amendment would save the District of Columbia money which they would have spent on an additional ENT appointment for Medicaid and DCRSA patients. With the amendment, patients could obtain medical clearance from their primary care physician instead.
 - e. Currently, the legislation requires ENT medical clearance every time an individual gets hearing aids, unless it is to replace a current hearing aid obtained in the past 2 years. This requires every hearing aid patient with long standing hearing loss to visit an ENT when they get new hearing aids. This is difficult for many individuals with long standing hearing loss but especially those in the Deaf community who mainly utilize sign language with hearing aids as they have a long standing diagnosis with no medical contraindication to hearing aids. Current legislation alienates the large deaf community in DC by taking their ability to opt out of seeing an ENT. A primary care physician option would give them independence.
- (3) The new legislation will be more aligned with what the FDA recommends for hearing aid dispensing. The District of Columbia should be aligned with federal recommendations.
- a. The FDA requires that individuals 18+ either receive a medical evaluation with hearing aid clearance from a licensed physician within 6 months of hearing aid fitting OR sign a waiver to waive the medical evaluation requirement. Many states follow this recommendation, including Virginia and Maryland.

- i. This new amendment will allow a medical evaluation from any licensed physician, not just an ENT, for clearance, AND will allow the hearing test and clearance to occur within 6 months of hearing aid fitting.
- ii. As this amendment lacks the option of a waiver for adults, which the FDA allows and other states, like Virginia offer, I further encourage the city council to include an addition of a waiver to the amendment for those 18+ with hearing loss to obtain hearing aids.

Relation to Federal Legislation

(1) The FDA Reauthorization Act of 2017 (FDARA), Congress outlined certain requirements to establish a category of over the counter (OTC) hearing aids and the requirements that apply to them. This statutorily mandated process requires FDA to publish proposed regulations for public comment, and then to publish final regulations. There is talk this may negate some state specific hearing aid dispensing legislation.

- a. However, the FDA may not release regulations until the end of the year, and may spend months to possibly years negotiating and redefining these regulations. In addition to this, the FDA may only place federal requirements on over the counter hearing aids, they may continue to consider prescription based hearing aids medical devices and allow state legislature, such as this one, to regulate their dispensing.

- i. As there is no information readily available on what the FDA requirements will be and when they will be put into action, it would be inattentive to not address the need for this change in legislation now, as it affects, and will continue to affect so many people in the District of Columbia.
- ii. Essentially, possible future federal legislation that may negate current legislation should not affect how we view and discuss this topic as there are no facts readily available to suggest the future federal legislation will do so.

Resources

<https://www.audiologist.org/audiologists/hipaa-fda>

<https://law.justia.com/codes/virginia/2016/title-54.1/chapter-15/>

<https://www.fda.gov/regulatory-information/selected-amendments-fdc-act/fda-reauthorization-act-2017-fdara>

My information:

Nicole Jordan, Au.D.

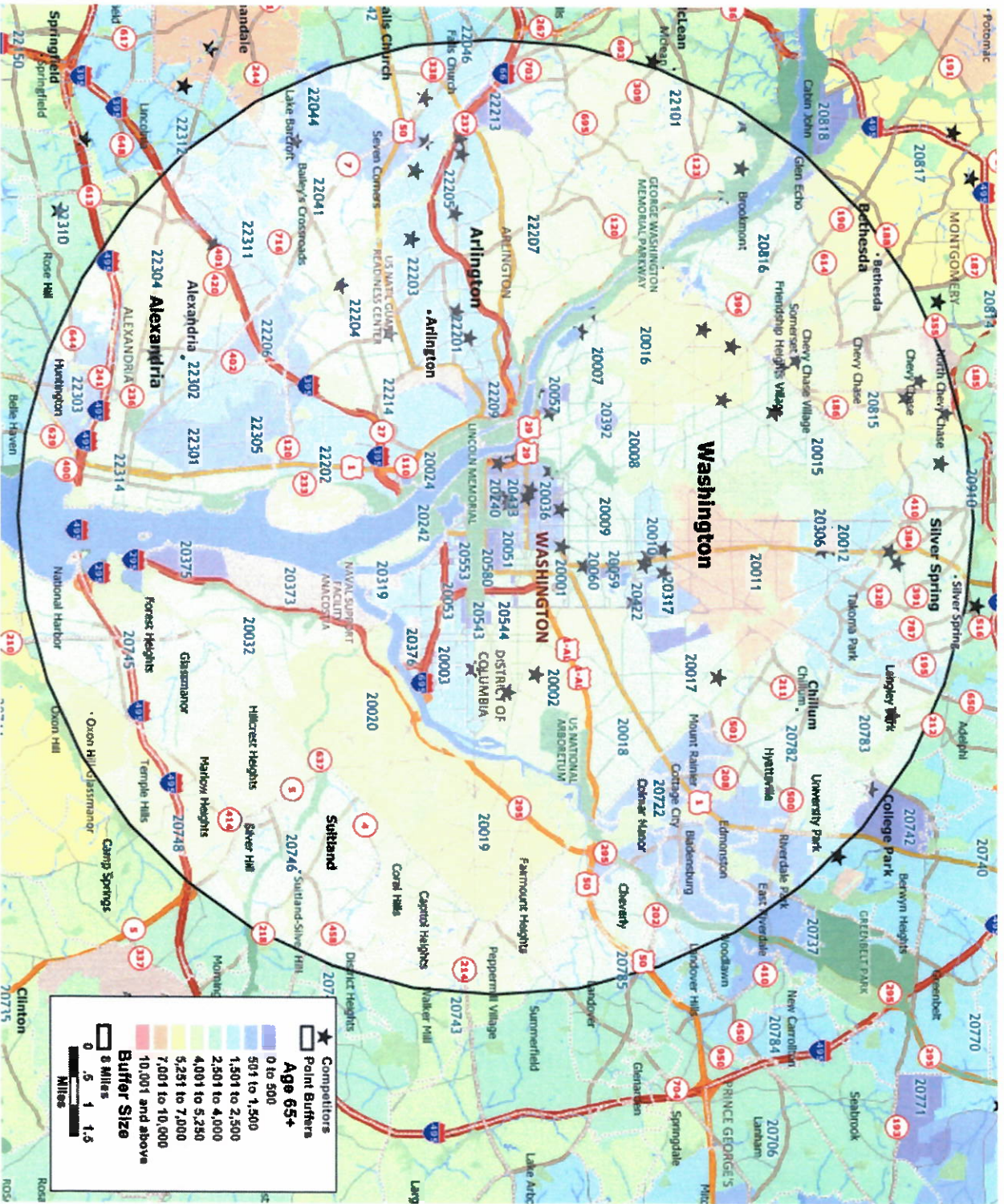
Clinical Coordinator of Audiology

George Washington University Speech and Hearing Center

nijordan@gwu.edu

Phone: 202-994-7360

Fax: 202-955-3919



GOVERNMENT OF THE DISTRICT OF COLUMBIA
Department of Health



Public Hearing on

B23-0565, the “Hearing Aid Sales Amendment Act of 2019”

Testimony of
Anjali Talwalkar, MD, MPH
Senior Deputy Director, Community Health Administration

Before the
Committee on Health
Council of the District of Columbia
The Honorable Vincent Gray, Chairperson

January 27, 2020
10:00AM
Room 412
John A. Wilson Building
1350 Pennsylvania Avenue, NW
Washington, DC 20004

Good morning, Chairman Gray and members of the Committee on Health. I am Dr. Anjali Talwalkar, Senior Deputy Director of the Community Health Administration at the District of Columbia Department of Health (DC Health). On behalf of the Director of DC Health, Dr. LaQuandra Nesbitt, and Mayor Bowser, I am pleased to offer testimony on Bill 23-0565, the "Hearing Aid Sales Amendment Act of 2019."

As introduced, the proposed legislation amends the Hearing Aid Dealers and Consumer Act of 1977 to require a minor to receive medical clearance from an otolaryngologist and a hearing test evaluation before a registrant can fit, offer for sale, or sell a hearing aid to the minor, and to require an adult to receive medical clearance from an otolaryngologist or a licensed physician and a hearing test evaluation before a registrant can fit, offer for sale, or sell a hearing aid to the adult.

According to the National Health Interview Survey, 8.6 percent of adults ages 18 years and over in the District of Columbia have hearing loss.¹ That proportion increases significantly for older adults. DC Health supports the intent of Bill 23-0565 to ensure that our residents receive comprehensive audiological care, which includes evaluation by an otolaryngologist for when a hearing test is initially failed and for ongoing specialty care of underlying causes (when present.) However, the bill may have unintended consequences for residents with hearing loss who do not require specialty physician care for ongoing hearing evaluation.

The District boasts one of the highest health insurance coverage rates in the country. The District's Medicaid program and the locally-funded DC Health Care Alliance program provide health insurance coverage to nearly 40 percent of all District residents, including 70 percent of all District children. Hearing aids are a mandatory, covered benefit under the District's Medicaid State

¹ https://www.cdc.gov/nchs/data/health_policy/hearing_loss_table_SEs.pdf

Plan approved by the Centers for Medicare and Medicaid Services (CMS). The District also extends this benefit to individuals enrolled in the locally-funded Alliance program.

The Early and Periodic Screening, Diagnosis and Treatment (EPSDT) Program is the child health component under Medicaid. EPSDT services are mandated for children from birth through age 21. Specifically, EPSDT covers audiological assessments; hearing aid evaluation; and medically necessary hearing aid services, including hearing aids and hearing aid accessories and services.

Children's health insurance coverage for hearing-related services in the District likely aligns with this bill for initial evaluation of hearing loss but may not be consistent with standards of maintenance care, particularly with the role of audiologists in hearing care and hearing aid assessments.

While all adults also should receive an audiological evaluation from a qualified health professional, it is not necessary for that professional to be a licensed physician in every circumstance. Initial evaluation by an otolaryngologist or licensed physician is warranted to identify if underlying medical causes of hearing loss are present such as infection, injury or, rarely, tumors. However, this level of physician care is often not required to manage adult-onset hearing loss after underlying causes are ruled out, and thus should not be mandated broadly. Audiologists, licensed professionals who specialize in the diagnosis and treatment of hearing loss and balance disorders, play a central role in the screening, diagnosis, and treatment of persons with hearing loss, including assessments for fitting of a hearing aid. They often work in collaboration with physicians as part of a hearing health care team, but they are also able to help patients manage their hearing loss and their use of assistive technology.

In addition, for adults, particularly adults aged 65 and over, health insurance coverage of hearing-related services, including specialist visits, may be more variable. We do not want to

create barriers for children and adults who need an assistive device along with routine monitoring and re-evaluations of their hearing to ensure continued effectiveness of the device.

In conclusion, the Department of Health looks forward to working with Council to achieve the goals of B23-565 and to ensure that all District residents receive comprehensive care and the supports they need to achieve their highest quality of life. I am available to answer any questions you may have at this time.

ATTACHMENT E

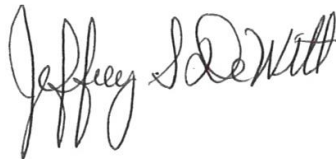
Government of the District of Columbia
Office of the Chief Financial Officer



Jeffrey S. DeWitt
Chief Financial Officer

MEMORANDUM

TO: The Honorable Phil Mendelson
Chairman, Council of the District of Columbia

FROM: Jeffrey S. DeWitt
Chief Financial Officer 

DATE: February 27, 2020

SUBJECT: Fiscal Impact Statement – Hearing Aid Sales Amendment Act of 2020

REFERENCE: Bill 23-565, Committee Print as provided to the Office of Revenue
Analysis on February 18, 2020

Conclusion

Funds are sufficient in the fiscal year 2020 through fiscal year 2023 budget and financial plan to implement the bill.

Background

Individuals in the District of Columbia must be examined by a licensed otolaryngologist and receive written medical consent before they can purchase a hearing aid. The bill allows¹ licensed physicians that are not specialized in otolaryngology to give medical clearance to patients to purchase hearing aids. The bill also gives individuals over eighteen the option to purchase a hearing aid after being examined by a licensed audiologist or by signing a Department of Health (DOH) waiver form.

Financial Plan Impact

Funds are sufficient in the fiscal year 2020 through fiscal year 2023 budget and financial plan to implement the bill. Allowing physicians and audiologists to clear patients for hearing aid use does not have a cost. DOH can produce a waiver form to be used by individuals without additional resources.

¹ By amending the Hearing Aid Dealers and Consumer Act of 1977, effective October 26, 1977 (D.C. Law 2-33; D.C. Official Code § 28-4001 et seq.).

ATTACHMENT F



OFFICE OF THE GENERAL COUNSEL

Council of the District of Columbia
1350 Pennsylvania Avenue NW, Suite 4
Washington, DC 20004
(202) 724-8026

MEMORANDUM

TO: Councilmember Vincent C. Gray

FROM: Nicole L. Streeter, General Counsel *NLS*

DATE: June 20, 2020

RE: Legal sufficiency determination for Bill 23-565, the
Hearing Aid Sales Amendment Act of 2020

The measure is legally and technically sufficient for Council consideration.

The legislation amends Chapter 40 of Title 28¹ to allow a registrant² to sell hearing aids to persons 18 years of age or older who have not had a medical clearance or examination or hearing test evaluation if they waive, in writing, these requirements.

I am available if you have any questions.

¹ Hearing Aid Dealers and Consumers.

² “registrant” means a hearing aid dispenser, audiologist, or otolaryngologist or licensed physician who engages in the practice of fitting and selling hearing aids and who has registered pursuant to section 4

ATTACHMENT G

Bill 23-565
COMPARATIVE PRINT
COMMITTEE ON HEALTH

D.C. Official Code § 28–4001. Definitions.

(5) “medical clearance” means a written statement based upon a medical examination by a ~~an~~ otolaryngologist an otolaryngologist or licensed physician, that concludes that the patient may benefit from a hearing aid and that there are no medical conditions to contraindicate the use of a hearing aid. The statement must include the date of the medical examination.

D.C. Official Code § 28–4004. Special provisions.

(a) No registrant shall fit, offer for sale, or sell a hearing aid to:

(1) A minor under 18 years of age unless, within the preceding 6 months, the minor has received a medical clearance and a hearing test evaluation; or

(2) An individual 18 years of age or older unless, within the preceding 6 months, the individual has:

(A) Received a medical clearance and a hearing test evaluation;

(B) Received a written statement based upon a medical examination and hearing test evaluation by a licensed audiologist that concludes that the patient may benefit from a hearing aid and that there are no medical conditions to contraindicate the use of a hearing aid; or

(C) Signed a waiver form created or approved by the Department of Health stating that the individual:

(i) Has a history of stable hearing loss that does not require medical management; and

(ii) Has waived having a medical examination and hearing test evaluation.”.

ATTACHMENT H

1 **Committee Print**
2 **Bill 23-565, Hearing Aid Sales Amendment Act of 2020**
3 **Committee on Health**
4 **June 23, 2020**

5
6
7 A BILL
8
9
10 _____

11
12 IN THE COUNCIL OF THE DISTRICT OF COLUMBIA
13
14 _____
15

16
17 To amend Chapter 40 of Title 28 of the District of Columbia Official Code to expand the
18 definition of medical clearance to include a licensed physician, and to provide that a
19 person 18 years of age or older may purchase a hearing aid without having had a medical
20 examination or hearing test evaluation by written waiver.
21

22 BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA,

23 That this act may be cited as the “Hearing Aid Sales Amendment Act of 2019”.

24 Sec. 2. Chapter 40 of Title 28 of the District of Columbia Official Code is amended as
25 follows:

26 (a) Section 28-4001(5) is amended by striking the phrase “an otolaryngologist,” and
27 inserting the phrase “an otolaryngologist or licensed physician” in its place.

28 (b) Section 28-4004(a) of the District of Columbia Official Code is amended to read as
29 follows:

30 “(a) No registrant shall fit, offer for sale, or sell a hearing aid to:

31 “(1) A minor under 18 years of age unless, within the preceding 6 months, the
32 minor has received a medical clearance and a hearing test evaluation; or

33 “(2) An individual 18 years of age or older unless, within the preceding 6 months,
34 the individual has:

1 “(A) Received a medical clearance and a hearing test evaluation;

2 “(B) Received a written statement based upon a medical examination and
3 hearing test evaluation by a licensed audiologist that concludes that the patient may benefit from
4 a hearing aid and that there are no medical conditions to contraindicate the use of a hearing aid;
5 or

6 “(C) Signed a waiver form created or approved by the Department of
7 Health stating that the individual:

8 (i) Has a history of stable hearing loss that does not require
9 medical management; and

10 (ii) Has waived having a medical examination and hearing test
11 evaluation.”.

12 Sec. 3. Rules.

13 The Mayor, pursuant to § 2-501 *et seq.*, may issue rules to implement the provisions of
14 this act.

15 Sec. 4. Fiscal impact statement.

16 The Council adopts the fiscal impact statement in the committee report as the fiscal
17 impact statement required by section 4a of the General Legislative Procedures Act of 1975,
18 approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

19 Sec. 5. Effective date.

20 This act shall take effect following approval by the Mayor or in the event of veto by the
21 Mayor, action by the Council to override the veto, a 30-day period of congressional review as
22 provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December

1 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1), and publication in the District of
2 Columbia Register.
3