

# HOUSE BILL REPORT

## ESHB 1222

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**As Passed House:**  
February 28, 2023

**Title:** An act relating to requiring coverage for hearing instruments.

**Brief Description:** Requiring coverage for hearing instruments.

**Sponsors:** House Committee on Health Care & Wellness (originally sponsored by Representatives Orwall, Simmons, Reeves, Reed, Leavitt, Kloba, Farivar, Doglio, Morgan, Slatter, Ramel, Goodman, Callan, Fosse, Pollet, Lekanoff and Macri).

**Brief History:**

**Committee Activity:**

Health Care & Wellness: 1/18/23, 1/27/23 [DPS];  
Appropriations: 2/8/23 [DPS(HCW)].

**Floor Activity:**

Passed House: 2/28/23, 89-8.

**Brief Summary of Engrossed Substitute Bill**

- Requires nongrandfathered large group health plans to provide coverage for hearing instruments.
- Modifies the requirement for health plans offered to public employees and their covered dependents to provide coverage for hearing instruments.
- Requires the Insurance Commissioner to include hearing instruments in any updated essential health benefits benchmark plan, upon authorization from the Legislature to update the plan.

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**HOUSE COMMITTEE ON HEALTH CARE & WELLNESS**

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.*

Signed by 13 members: Representatives Riccelli, Chair; Bateman, Vice Chair; Hutchins, Assistant Ranking Minority Member; Barnard, Bronoske, Davis, Macri, Maycumber, Mosbrucker, Orwall, Simmons, Stonier and Tharinger.

**Minority Report:** Do not pass. Signed by 2 members: Representatives Schmick, Ranking Minority Member; Harris.

**Minority Report:** Without recommendation. Signed by 1 member: Representative Graham.

**Staff:** Kim Weidenaar (786-7120).

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## HOUSE COMMITTEE ON APPROPRIATIONS

**Majority Report:** The substitute bill by Committee on Health Care & Wellness be substituted therefor and the substitute bill do pass. Signed by 29 members: Representatives Ormsby, Chair; Bergquist, Vice Chair; Gregerson, Vice Chair; Macri, Vice Chair; Stokesbary, Ranking Minority Member; Chambers, Assistant Ranking Minority Member; Corry, Assistant Ranking Minority Member; Berg, Chopp, Connors, Couture, Davis, Dye, Fitzgibbon, Hansen, Harris, Lekanoff, Pollet, Riccelli, Rude, Ryu, Sandlin, Senn, Simmons, Slatter, Springer, Steele, Stonier and Tharinger.

**Minority Report:** Do not pass. Signed by 2 members: Representatives Chandler and Schmick.

**Staff:** David Pringle (786-7310).

### **Background:**

#### Hearing Instruments.

A "hearing instrument" is defined as any wearable prosthetic instrument or device designed for or represented as aiding, improving, compensating for, or correcting defective human hearing and any parts, attachments, or accessories of such an instrument or device, excluding batteries and cords, ear molds, and assistive listening devices. The fitting and dispensing of hearing instruments must be performed by a licensed hearing aid specialist, a licensed audiologist, or an audiologist holding an interim permit from the Department of Health.

A hearing aid specialist or audiologist may not sell a hearing instrument unless the prospective patient or client has presented a written statement signed by a licensed physician that states that the patient's or client's hearing loss has been medically evaluated and the patient or client may be considered a candidate for a hearing instrument. The medical evaluation must have taken place within the preceding six months. A hearing aid specialist or audiologist may allow the prospective patient or client 18 years of age or older

to waive the medical evaluation requirement, if the hearing aid specialist or audiologist:

- informs the prospective patient or client that the exercise of the waiver is not in the patient's or client's best health interest;
- does not in any way actively encourage the prospective patient or client to waive the medical evaluation;
- offers the prospective patient or client the opportunity to sign the following statement: "I have been advised the Food and Drug Administration has determined that my best health interest would be served if I had a medical evaluation before purchasing a hearing instrument;" and
- provides the prospective patient or client with a copy of the signed waiver statement.

#### Hearing Instrument Coverage in Washington.

Beginning January 1, 2019, health plans offered to public employees and Medicaid enrollees must include coverage for hearing instruments. For public employees, coverage must include a new hearing instrument every five years, and services and supplies such as the initial assessment, fitting, adjustment, and auditory training. For Medicaid enrollees, coverage must include, when medically necessary, a new hearing instrument every five years, a new hearing instrument when alterations to the existing hearing instrument cannot meet the needs of the patient, and services and supplies such as the initial assessment, fitting, adjustment, and auditory training. The hearing instrument must be recommended and dispensed by a licensed audiologist, hearing aid specialist, or physician or osteopathic physician specializing in otolaryngology.

#### Over-the-Counter Hearing Instruments.

On October 17, 2022, federal Food and Drug Administration rules went into effect authorizing the use of a new category of hearing aid, over-the-counter (OTC) hearing instruments, which consumers may purchase directly from stores or online retailers without obtaining a medical exam or requiring a fitting by an audiologist or hearing aid specialist. The OTC hearing instruments are available to adults with perceived mild to moderate hearing impairment.

#### Essential Health Benefits Benchmark Plan.

Passed in 2010, the federal Patient Protection and Affordable Care Act (ACA) enacted a variety of provisions related to private health insurance coverage, including establishing essential health benefits. The ACA requires most individual and small group market health plans to cover 10 categories of essential health benefits. To determine the specific services covered within each category, federal rules allow states to choose a benchmark plan and to supplement that plan to ensure it covers all 10 categories. State law designates the largest small group plan in the state as the benchmark plan.

#### **Summary of Engrossed Substitute Bill:**

A health carrier offering a nongrandfathered large group health plan and health plans offered to public employees and their covered dependents issued or renewed on or after

January 1, 2024, must include coverage for hearing instruments, except for OTC hearing instruments, including bone conduction hearing devices. The coverage must include the hearing instrument, the initial assessment, fitting, adjustment, auditory training, and ear molds, as necessary, to maintain optimal fit.

A health carrier and health plan offered to public employees must provide coverage for hearing instruments at no less than \$3,000 per ear with hearing loss every 36 months. This benefit is not subject to the enrollee's deductible, unless the plan is offered as a qualifying health plan for a health savings account in which case the health carrier or health plan may only establish the health plan's deductible at the minimum level necessary to preserve the enrollee's ability to claim tax exempt contributions and withdrawals from the health savings account under federal law and regulations.

Coverage for minors under 18 years of age is only available after the minor has received medical clearance within the past six months from an otolaryngologist for an initial evaluation of hearing loss or from a licensed physician which indicates there has not been a substantial change in clinical status since the initial evaluation by an otolaryngologist.

The requirement for health plans offered to public employees and their covered dependents to include coverage for a new hearing instrument every five years expires December 31, 2023.

Upon authorization from the Legislature to modify the state's essential health benefit benchmark plan, the Insurance Commissioner must include coverage for hearing instruments and the associated services in the updated plan.

For purposes of these requirements, an OTC hearing instrument is defined 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 allows the user to control the hearing aid and customize it to the user's hearing needs and may use wireless technology or may include tests for self-assessment of hearing loss. The device is available OTC, without prescription, involvement, or intervention of a licensed person, to consumers.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.

**Staff Summary of Public Testimony (Health Care & Wellness):**

(In support) Many individuals are surprised to learn that hearing instruments are not

currently covered by health insurance. Hearing loss impacts 15 percent of adults and one in 1000 kids. There are devastating long term consequences of not having access to hearing aids.

Hearing words is only the surface of hearing loss. If you can't hear, your brain is working hard to read people and the room. People that cannot hear miss out on a lot; communication is beyond language. Access to sound is just the beginning; hearing aids open the world of communication for those who can access them. Hearing instruments open many doors and allow children to learn, play sports, and hear their teachers and friends. Access to hearing instruments is also a safety issue. It would be far more dangerous for a child to ride their bike without being able to hear.

The ability to access language is a basic human right. Some kids' families can only afford one hearing instrument. Imagine a child with only a monocle in school. Hearing aids are not optional.

Kids frequently need new hearing instruments as they grow and hearing instruments are a huge out-of-pocket cost, generally around \$7,000. The cost to cover hearing instruments is a cost that Washington families cannot and should not have to bear.

There is extensive data about the impacts of untreated hearing loss. Communication challenges for a child can lead to isolation and difficulty learning. There are also social and emotional consequences for children and adults. For adults with hearing loss, there is a greater chance of dementia. This bill is essential to prevent isolation and safety for our older adults. This bill adds reasonable coverage, while it won't cover everything, it will make a meaningful impact.

The state's benchmark plan included coverage for cochlear implants but not for hearing aids. The Office of the Insurance Commissioner completed an actuarial analysis of the hearing benefit in 2021 and found the cost to be 36 cents per person per month. Because the benefit is limited to the large group market, there is no cost defrayal issue.

(Opposed) The Legislature should consider and analyze the costs this bill would create for the state and premium payers. There would be a significant increase. The Legislature needs to complete a full policy analysis of all of the benefit mandates and look at the tradeoffs.

**Staff Summary of Public Testimony (Appropriations):**

(In support) With a son that need hearing aids, it seems like the only objection to this bill could be due to the cost. The per-person cost is small for health plans, but the impact on individuals is huge. Detecting and treating hearing loss saves \$400,000 in special education costs per child. It would be hard to imagine trying to go to school and learn without hearing aids. After a young girl was found to be deaf, she was determined by her health plan to not

be eligible for a bone-conductive device, which costs about \$9,000. But schools had to supply much more costly learning support instead, as well as deal with the cognitive delays associated with hearing loss. Untreated hearing loss results in lifelong earnings loss and cognitive delays. Having to pay or not hearing is a terrible choice. The Office of the Insurance Commissioner has been working on this proposal for a number of years, and it only impacts the large group insurance market. As a family with two sons with bilateral hearing loss, the cost of hearing aids for the family is a great burden. Having access to hearing is allowing our sons to excel at school.

(Opposed) Please consider all of the bills that mandate additional costs for health insurance plan coverage together, and assess the cumulative impact on premiums.

**Persons Testifying (Health Care & Wellness):** (In support) Representative Tina Orwall, prime sponsor; Cynthia Stewart, Hearing Loss Association of Washington; Jill Bujnevicie, Let Washington Kids Hear; Julia Fitts; Douglas Sladen; Emily Wicks; Jane Beyer, Office of the Insurance Commissioner; Laura Gramer; Rebecca Kolsky; and Chad Ruffin.

(Opposed) Jennifer Ziegler, Association of Washington Health Care Plans.

**Persons Testifying (Appropriations):** (In support) Jill and Hugo Bujnevicie; Cynthia Stewart, Hearing Loss Association of America-Washington State; Julia Fitts; Doug Baker, Alexander Graham Bell Association for the Deaf and Hard of Hearing-Pacific Northwest Chapter; Shanna Porter; Preston Dwooskin; Jane Beyer, Office of the Insurance Commissioner; and Zephyr Kolsky.

(Opposed) Jennifer Ziegler, Association of Washington Health Care Plans.

**Persons Signed In To Testify But Not Testifying (Health Care & Wellness):** Doug Baker, Pacific Northwest Alexander Graham Bell Association for the Deaf and Hard of Hearing; Hollie Sandlin; Christine Griffin; Cheryl Perazzoli, Hearing Loss Association of Washington; Michelle Pearl; David Dupree; August Kotovic; Ruby Kotovic; Shanna Porter; Christina Aguirre-Slater; Davis Bean; Norma Almli; Cassidy Bean; and Valeri Sevieux.

**Persons Signed In To Testify But Not Testifying (Appropriations):** None.