

ORIGINAL

# IN THE SUPREME COURT OF OHIO

State, ex rel. Cleveland Right to Life, Inc., et al.,	:	Case No. 13-1668
	:	
Relators,	:	Original Action in Mandamus and Prohibition
	:	
v.	:	
	:	
State of Ohio Controlling Board, et al.,	:	
	:	
Respondents.	:	

**BRIEF OF AMICI CURIAE,  
OHIO HOSPITAL ASSOCIATION, OHIO STATE MEDICAL ASSOCIATION,  
AND OHIO OSTEOPATHIC ASSOCIATION,  
IN SUPPORT OF RESPONDENTS**

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## **INTRODUCTION AND STATEMENT OF INTEREST OF AMICI CURIAE**

The Ohio Hospital Association, Ohio State Medical Association, and Ohio Osteopathic Association (collectively “Amici”) have a substantial interest in this case challenging the State of Ohio Controlling Board’s (“Controlling Board”) authorization of the expenditure of federal Medicaid funds, a significant portion of which will be used to pay for medical services provided to needy Ohioans by hospitals and doctors.

The Ohio Hospital Association (“OHA”) is a private non-profit trade association established in 1915 as the first state-level hospital association in the United States. For decades, the OHA has provided a mechanism for Ohio’s hospitals to come together and develop healthcare legislation and policy in the best interest of hospitals and their communities. The OHA is comprised of 213 private, local, state, and federal government hospitals and 22 health systems, all located within Ohio. The OHA’s mission is to collaborate with member hospitals and health systems to ensure a healthy Ohio.

The Ohio State Medical Association (“OSMA”) is a non-profit professional association whose members consist of physicians, medical residents, and medical students in the State of Ohio. With nearly 20,000 members, the OSMA is the state’s largest physician-led membership organization, representing doctors engaged in the practice of medicine within all medical specialties. The OSMA provides professional advocacy support and ongoing professional development opportunities in line with its mission of being dedicated to empowering physicians, residents and medical students on behalf of their patients and profession.

The Ohio Osteopathic Association (“OOA”) is a non-profit professional association, founded in 1898 that advocates for Ohio’s 4,600 licensed doctors of osteopathic medicine (“DOs”), Ohio healthcare facilities accredited by the American Osteopathic Association’s Healthcare Facilities Accreditation Program, and the Ohio University College of Osteopathic

Medicine in Athens. DOs represent 12% of all physicians practicing in Ohio and 26% of the state's family physicians. OOA's mission includes promoting Ohio's public health and advancing the distinctive philosophy and practice of osteopathic medicine within the state.

Relators bring this action claiming a clear legal right to "void" the action of the Controlling Board authorizing a request of the Ohio Department of Medicaid ("Department") to expend federal Medicaid funds available under the Affordable Care Act ("ACA"). While the primary legal issue before the Court is straightforward – whether language removed from a bill by the Governor's veto is "prevailing" and enforceable – the impact of Medicaid expansion as set forth in the ACA, is not. The specific federal funds that were transferred by the Controlling Board and give rise to the instant action are part of a complex and comprehensive healthcare reimbursement system, in which hospitals and doctors play a critical role. It is important for the Court to understand the negative impact Ohio's hospitals, doctors, their patients, and the communities they serve would suffer if the statutorily permissible actions taken by the Director and the Controlling Board are overturned pursuant to Relators' misguided arguments.

### **STATEMENT OF THE CASE AND FACTS**

Amici defer to the Statement of the Case and Statement of Facts as set forth in Respondents' Brief but wish to expand and highlight the following facts that are of critical import to Amici.

As passed, the ACA required all states, beginning in 2014, to expand Medicaid coverage to all individuals under the age of 65, who are not pregnant, with incomes up to 138% of the federal poverty level who legally reside in the United States, and who are not entitled to or enrolled in Medicare. *See National Federation of Independent Business v. Sebelius*, 132 S. Ct. 2566, 2581–82 (2012). Such expanded Medicaid coverage by all states was considered mandatory under the ACA when it became law. *Id.* at 2572. If a state did not implement the

Medicaid expansion to cover this newly eligible Medicaid group, the federal government could withhold all existing Medicaid funding from the state. *Id.* at 2574.

However, in its landmark decision upholding the constitutionality of the ACA, the United States Supreme Court found unconstitutional that part of the ACA that allowed the federal government to withhold existing Medicaid program funding from those states choosing not to expand Medicaid. *Id.* at 2606–07 . As a result, Medicaid expansion became optional for states. Ohio chose to expand Medicaid and worked with the federal government and through the Controlling Board to appropriate federal funds to pay for the expansion.

Ohio, like all other states, has a contract with the federal government that specifies all of the eligibility groups (mandatory and optional) that it covers under Medicaid, the services it offers under Medicaid, and other structural components of its Medicaid program (the “State Plan”). On September 26, 2013, the Director of the Department of Medicaid (“Director”) submitted a State Plan Amendment to the federal government seeking to extend Medicaid coverage to additional populations as specified under the ACA. The Centers for Medicare & Medicaid Services approved Ohio’s amendment on October 10, 2013, thereby making federal funds available to extend Medicaid coverage in Ohio starting January 1, 2014. *See* Letter from Verlon Johnson, Associate Regional Administrator, Division of Medicaid and Children’s Health Operations, to John McCarthy, Ohio Department of Medicaid (Oct. 10, 2013) (available at <http://www.healthtransformation.ohio.gov/LinkClick.aspx?fileticket=TZXgtKC88ww%3d&tabid=160>).

The Director had express authority to seek the State Plan Amendment without additional legislation or legislative approval. *See* R.C. 5162.07. Likewise, R.C. 5163.03 provides the Director with full authority to implement Medicaid expansion without first seeking additional

legislative permission. This section specifies that “the Medicaid program shall cover all mandatory eligibility groups” and “may cover any of the optional eligibility groups.” R.C. 5163.03. Ohio Medicaid is not permitted to cover an optional group that a state statute prohibits, but no such prohibition exists for the group to be added under the expansion because there is no statute that prohibits the group’s inclusion.

The Director is further authorized to request transfers of federal Medicaid funds to support the expansion through R.C. 131.35, which permits a state agency to spend federal funds pursuant to an appropriation of the General Assembly *or* authorization by the Controlling Board *or* pursuant to an executive order. R.C. 131.35(A)(1). Acting under this authority, on October 11, 2013, the Director submitted a request to the Controlling Board seeking authorization to spend federal-only funds to extend Medicaid coverage in Ohio beginning January 1, 2014. Fund/Appropriation Request, Ohio Controlling Board, Request from John McCarthy of Department of Medicaid (Oct. 11, 2013) (available at <http://www.healthtransformation.ohio.gov/LinkClick.aspx?fileticket=r97TYcF7mE8%3d&tabid=160>).

Based on the statutory authority set forth in R.C. 131.35, on October 21, 2013, the Controlling Board decision (in a 5-2 vote) to authorize the spending of federal funds to expand Medicaid to 275,000 low-income, uninsured Ohioans is clearly permitted by Ohio law. *See* Transcript of Proceedings Before the Ohio Controlling Board, 2013 Leg., 130<sup>th</sup> General Assembly (Ohio 2013) (Monday afternoon session, Oct. 21, 2013).

Importantly for Amici, these federal funds for Medicaid expansion are part of a much larger package of federal payment reforms and reimbursement cuts that are part of the ACA. Increased federal funding for Medicaid expansion was designed to replace, at least in part,

significant federal cuts in hospital reimbursement included in the ACA. However, the planned redeployment of those funds into Medicaid expansion programs, funds that are critical to Amici, is jeopardized by Relators' action.

While Amici believe that Medicaid expansion was the right policy decision for Ohio, the propriety of this policy decision is not before the Court. Nonetheless, Relators' attempt to persuade the Court that Medicaid expansion is terrible policy for Ohio. The instant matter is narrowly focused on the Controlling Board's authority to approve spending federal funds. As set forth below, Relators are wrong on both the law and policy.

### **ARGUMENT**

#### **Proposition of Law: The Controlling Board Acted Within Its Authority.**

##### **I. The Controlling Board Lawfully Authorized Federal Funding For Medicaid Expansion**

There is no question that the Director has legal authority to seek a State Plan Amendment without seeking additional legislative authority before doing so. Ohio Revised Code 5162.07 requires the Director to seek federal approval for Plan amendments "for which federal approval is needed" and permits the Director to seek federal approval for state plan amendments that "state statutes permit rather than require be implemented." Having sought and obtained federal approval for Medicaid expansion, the Director next sought approval to use available federal funds to pay for the program expansion. Relators criticize, but articulate no legal challenge to, this authority.

Rather, Relators focus on the Controlling Board's authority to approve the expenditure of federal funds. Ohio Revised Code 131.35 permits a state agency to spend federal funds as long as the expenditure is authorized by any one of three methods: (1) "pursuant to specific

appropriations of the general assembly”; (2) “authorized by the controlling board” *or* (3) “authorized by an executive order.”

State departments regularly use each of these mechanisms to secure federal funding, often in instances involving healthcare funds, without seeking additional legislative approval in order to do so. For example, when Congress extended certain Medicaid rate structures under the federal stimulus bills, a surplus of approximately \$400 million was created for Ohio. A portion of that was allocated to reduce the franchise fees assessed to Ohio hospitals by executive order. *See* Executive Order 2010-14S, signed October 14, 2010. Even more routinely, expenditures of federal Medicaid funds occur in exactly the same manner as occurred in this instance: by Controlling Board approval and without separate authorization by the General Assembly.<sup>1</sup> Appropriately relying on his authority under R.C. 131.35, the Director obtained Controlling Board approval to spend federal funds to extend Medicaid coverage in Ohio, as state agency directors often do in the usual course of agency administration when federal funds become available.

In arguing that the Controlling Board’s action violates legislative intent, Relators ask this Court to measure legislative intent from an artificial point in time in the legislative process. Relators’ argument is contrary to the plain language of R.C. 127.17 and without regard to any subsequent action taken (or not taken) by the General Assembly. Relators make much of the fact that the General Assembly included language in HB 59 that would have prohibited expansion of the Medicaid program. *See* Relators Brief, at 4–5. However, the provision upon which Relators

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<sup>1</sup> Recent examples include a \$30 million transfer of federal Medicaid funds requested by the Department of Drug and Alcohol Addiction Services in June 2012, and a request from the Department of Aging to increase appropriation authority for enhanced federal reimbursements in November of 2010. (*See* Exhibits A and B). A recent non-Medicaid example is the Controlling Board’s approval of the Department of Education’s request to expend \$100 million in federal “Race to the Top” funds. (Exhibit C).

singularly rely was vetoed by the Governor. Veto Message from Governor John Kasich, Statement of the Reasons for the Veto of Items in Amended Substitute House Bill 59 (June 30, 2013) (available at <http://www.governor.ohio.gov/Portals/0/FY2014-15%20Budget%20Veto%20Messages.pdf>). The General Assembly made no attempt to override the veto, and has yet to introduce, let alone pass, any new bill that would prohibit Medicaid expansion. These facts completely discredit Relators' arguments.

Even while arguing that R.C. 127.17 is clear and not in need of statutory interpretation, Relators conveniently gloss over one critical word in the statute. Controlling Board authority is limited to carrying out the legislative intent as expressed "in the *prevailing* appropriation acts of the general assembly." R.C. 127.17 (emphasis added.)

It is undisputed that the Governor vetoed the very language that serves as the sole foundation of Relators' case. See Veto Message. A legal provision that has been vetoed is not, and logically can never be, "the prevailing appropriation" to which the Controlling Board is bound. By operation of the Ohio Constitution, vetoed language "shall be void" and has no limiting effect or impact on future actions of the Controlling Board. See Section 16, Article II, Ohio Constitution. The prevailing appropriation is what exists in current law and there is nothing in existing law prohibiting Medicaid expansion or the method by which expansion was achieved.

The word "prevailing" in R.C. 127.17 cannot be ignored. Relators' argument that legislative intent must be defined by a snapshot in time, rather than a final result, leads to absurd results. Applied in a different but equally illogical context, Relators would limit the Controlling Board's authority by an action passed by the General Assembly but later stricken by this Court or

even amended by subsequent action of the General Assembly itself. Such an interpretation would clearly not lead to a “just and reasonable result” as required by R.C. 1.47.

Had the General Assembly intended to limit the Controlling Board’s authority in this manner, it could have done so. Instead, R.C. 127.17 clearly defines the limitation on Controlling Board authority as the legislative intent that is expressed in the “prevailing” appropriation. A well-established rule of statutory construction requires this Court “to give effect to the words used, not to delete words used or to insert words not used.” *Perrysburg Twp. v. Rossford*, 103 Ohio St.3d 79, 2004-Ohio-4362, at ¶ 7, quoting *Cleveland Elec. Illum. Co. v. Cleveland*, 37 Ohio St.3d 50 (1988), paragraph 3 of the syllabus.

Amici fully support and join in the Brief of Respondents in this case, as well as the arguments made by other Amici that filed Briefs in support of Respondents. Relators’ request for relief must be denied for the legal reasons outlined above and in those briefs.

**II. Without Medicaid Expansion, the Economic Impact of \$15.4 Billion in Lost Federal Funds on Ohio Hospitals Will Be Devastating**

Ohio hospitals have long been required to provide free necessary medical care to uninsured individuals with incomes up to 100% of the federal poverty level. OAC 5101:3-2-07.17. Additionally, many Ohio hospitals also provide “charity care” to low-income individuals whose incomes are above 100% of the federal poverty level. *See Fact Sheet: State Budget 2014-15 Medicaid Expansion*, Ohio Hospital Association, available at <http://www.ohanet.org/wp-content/uploads/2012/12/OHA-Fact-Sheet-2012-Medicaid-Expansion.pdf> (attached as Exhibit D). Needless to say, Ohio hospitals lose money—lots of money—in providing this care to the neediest Ohioans. In fact, in 2011, Ohio hospitals provided \$1.2 billion in uncompensated care

to uninsured Ohioans, and provided an additional \$600 million in uncompensated care to Medicaid enrollees.<sup>2</sup>

To offset some of the losses that hospitals incur in providing uncompensated care to Ohio's neediest residents, the federal government established the Disproportionate Share Hospital ("DSH") program. *See* 42 U.S.C. 1395ww.<sup>3</sup> The Medicaid DSH program provided \$346 million to Ohio hospitals in 2011 to assist in off-setting the losses incurred in providing uncompensated care to the uninsured and Medicaid beneficiaries. Thus, Medicaid DSH payments to hospitals covered only about 20% of the total uncompensated care provided at Ohio hospitals in 2011 to uninsured patients and Medicaid beneficiaries, leaving Ohio hospitals to absorb the remaining enormous costs of uncompensated care (not to mention the Medicare losses, bad debt, and other uncompensated community benefit provided by hospitals and noted in footnote 2, *supra*).

Expansion of the Medicaid program, as contemplated by the ACA, was largely funded by cuts to existing hospital reimbursement programs, such as DSH. Under the ACA, Medicaid DSH funding alone for hospitals will be reduced \$877 million over an eight-year period (2014-2021). 42 U.S.C. 1396r (4)(f)(7)(A)(i). However, the Medicaid DSH cuts make up a small fraction of total hospital cuts to hospitals under the ACA. Total DSH and other federal reimbursement cuts to Ohio hospitals will amount to \$7.4 billion over the next ten years. *See*

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<sup>2</sup> These figures are obtained from hospital Medicaid cost reports, which are filed each year with the Department of Medicaid. The \$600 million in Medicaid losses results because Medicaid only pays hospitals, on average, 83% of the cost of providing care to Medicaid enrollees. These figures do not include an additional \$1.5 billion in uncompensated community benefit services provided by Ohio hospitals, nor an additional \$1.4 billion in Medicare losses and bad debt incurred by hospitals in 2011.

<sup>3</sup> In Ohio, the DSH program is implemented under the Hospital Care Assurance Program ("HCAP").

Affidavit of Ryan Biles (attached as Exhibit E). Whether or not Medicaid is expanded in Ohio, hospital DSH reimbursements and other payments to hospitals are being cut significantly.

The significant reduction in DSH funding for hospitals was predicated on the expectation that Medicaid expansion would reduce the amount of uncompensated care provided by hospitals. See S. Tavernise, *Cuts in Hospital Subsidies Threaten Safety Net Care*, N.Y. Times, Nov. 8, 2013; *Reforming the Medicaid Disproportionate Share Hospital Program*, Brookings Institution, Jan. 2010. The mitigating effects of Medicaid expansion were expected to be realized because more individuals covered by Medicaid would mean fewer uninsured individuals, and therefore less uncompensated care provided by hospitals. *Id.* In short, Medicaid expansion was intended to fill (at least in part) the gap caused by substantial cuts to the DSH program and other reimbursement programs.

With Medicaid expansion, Ohio hospitals estimate receiving \$800 million per year over ten years for services provided to 275,000 newly-covered Medicaid patients.<sup>4</sup> See Affidavit of Ryan Biles. On the other hand, if Ohio does not participate in Medicaid expansion, Ohio hospitals will forego this revenue and will, instead, continue to provide unsustainable levels of uncompensated care to these patients. The costs associated with continuing to care for the uninsured will have to be absorbed on top of the \$7.4 billion in DSH and other federal reimbursement cuts that have already been made. Such a system is simply unsustainable, as

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<sup>4</sup> Of the approximately \$1.2 billion in uncompensated care provided by hospitals to the uninsured, Ohio hospitals provided over \$571 million in free care to Ohio residents with income at or below 100% of the federal poverty level ("FPL"), as reported for the state fiscal year 2012 in Medicaid cost reports filed by Ohio hospitals. Furthermore, Ohio hospitals report having provided another \$590 million to uninsured patients with income *above* 100% FPL. Assuming all of the patients below 100% FPL and half of the patients above 100% FPL would qualify for Medicaid due to Medicaid expansion, this change could result in an annual reduction of over \$800 million in hospitals' uncompensated care costs. Without expansion, these costs would continue as uncompensated care for Ohio hospitals.

Ohio uncompensated care costs have increased 30% in just the last five years. The federal reimbursement cuts will be exacerbated by the loss of Medicaid expansion funds, and there will be a devastating economic impact on Ohio hospitals and doctors that would reverberate across the state, with Ohio's hospitals at the epicenter of the shockwaves. Graves, *Medicaid Expansion Opt-Outs and Uncompensated Care*, *New England Journal of Medicine* (Dec. 20, 2012), at 2365; *Policy Considerations for Medicaid Expansion in Ohio*, Health Policy Institute of Ohio (March 2013), at 6, available at <http://bit.ly/13k4O4X>. While detrimental to all hospitals, rural and safety net hospitals, which tend to serve the largest number of uninsured patients, will be the most severely impacted. Some of these hospitals may not survive without Medicaid expansion. See Kaiser Health News, *Rural Poor Likely to Feel Pinch of State Decisions Not to Expand Medicaid* (September 3, 2013) <http://www.kaiserhealthnews.org/daily-reports/2013/September/03/Medicaid-expansion.aspx>.

Likewise, physician practices in underserved areas are under severe economic distress and unable to handle additional charity care. According to the National Rural Health Association: "Rural residents are less likely to have employer-provided health care coverage or prescription drug coverage, and the rural poor are less likely to be covered by Medicaid benefits than their urban counterparts." *What's Different About Rural Health Care?*, National Rural Health Association, at <http://www.ruralhealthweb.org/go/left/about-rural-health> (last visited, Nov. 25, 2013). Ohioans in these rural areas have higher rates of chronic disease, like hypertension, diabetes and arthritis. Medicaid expansion is crucial to helping Ohio's rural physicians meet the healthcare needs of vulnerable populations in some of the most economically distressed parts of the state.

In sum, without Medicaid expansion, Ohio hospitals will lose out on \$8 billion that was intended to offset \$7.4 billion in federal cuts already made by the ACA.<sup>5</sup> Physicians will not realize the projected economic benefits of the expansion or realize a sufficient return on investment to support new health care technology to improve population health throughout Ohio. Primary care practices in underserved areas will experience further economic distress and safety net services will be limited. At the same time, uninsured patients will continue to turn to hospital emergency departments for chronic care conditions that are more efficiently treated in physician offices. The cumulative lost revenues would be devastating to Ohio hospitals, doctors, their patients and the communities they serve.

### **III. Without Medicaid Expansion, Ohio's Economy Will Suffer**

#### **A. Loss of Medicaid Expansion Funding Will Result in Significant and Direct Economic Harm to Amici and the Communities They Serve**

Hospitals and health systems are among Ohio's largest employers—7 out of the top 12 employers in Ohio are health systems, and hospitals are one of the largest employers in 77 of Ohio's 88 counties. *Fact Sheet: Economic Impact*, Ohio Hospital Association, available at <http://www.ohanet.org/wp-content/uploads/2012/12/OHA-Fact-Sheet-2012-Economic-Impact-April-5-2013.pdf>. Ohio hospitals employ more than 280,000 individuals and support 620,000 other jobs throughout Ohio. *Economic Contribution of Hospitals Often Overlooked*, American Hospital Association, Jan. 2013, available at <http://www.aha.org/content/13/13brief-econcontrib.pdf>. Hospitals had an economic impact on Ohio's economy of \$73.5 billion and paid \$17.3 billion in wages and benefits for employees in 2012. *Id.* Similarly, every dollar hospitals spend generates an additional \$1.23 in state economic activity, as hospitals and health systems purchase local goods and services, invest in information technology, equipment, and

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<sup>5</sup> These figures are for a ten-year period, based on \$800 million per year in anticipated funding from Medicaid expansion.

facilities, and stimulate other sectors of the economy. *Fact Sheet: Economic Impact*, Ohio Hospital Association, available at <http://www.ohanet.org/wp-content/uploads/2012/12/OHA-Fact-Sheet-2012-Economic-Impact-April-5-2013.pdf>. Healthcare sector jobs are expected to grow an additional 13% by 2020. *Id.*

Hospitals play an important role as an economic driver in Ohio, including during times when other industries have slowed and retracted. And Ohio hospitals are routinely recognized as national leaders in quality. Indeed, Ohio should be very proud of its healthcare system and numerous accomplishments in the medical field. Ohio should do all that it can to keep Ohio's hospitals and doctors open for business in order to continue providing quality healthcare services to Ohioans and to preserve and create new jobs.

Conversely, Ohio's economy cannot afford for hospitals to suffer a devastating financial impact due to failure to participate in Medicaid expansion. If the cuts described above are not partially offset by the increased revenues associated with Medicaid expansion, hospitals will be forced to cut services, lay off employees, and, in some cases, consider closing their doors altogether. S. Tavernise, *Cuts in Hospital Subsidies Threaten Safety-Net Care*, N.Y. Times, Nov. 8, 2013; *Policy Considerations for Medicaid Expansion in Ohio*, Health Policy Institute of Ohio (March 2013), at 6, available at <http://bit.ly/13k4O4X>. Ohio has already seen some of these difficult decisions being made, as hospitals across the state have announced layoffs, the closure of service lines (including several maternity unit closures), and in a couple of cases, the closure of the hospital. Such difficult decisions not only have dire economic consequences for local Ohio communities, but create additional access to care barriers for Ohio's underserved population, which already faces significant access problems. The closure of hospitals will also make it difficult to train, attract and retain graduates from Ohio's medical colleges.

Furthermore, absent Medicaid expansion in Ohio, the unsustainable “cost shift” will be exacerbated. The “cost shift” occurs when purchasers of private insurance pay more for their coverage in order to help offset the costs incurred by hospitals and other health care providers in providing uncompensated care. Cost shifting amounts to a “hidden tax” on business, privately insured individuals, and other purchasers of private coverage because the premiums paid by the privately insured reflect not only the costs of the insured member, but also the costs of uncompensated care. Dobson, DaVanzo, and Sen, *The Cost-Shift Payment ‘Hydraulic’: Foundation, History and Implications*, Health Affairs (Jan./Feb. 2006). A significant amount of hospitals’ uncompensated care costs are shifted onto private payers in Ohio, increasing the costs all other Ohioans pay for healthcare. Medicaid expansion will reduce the need to cost shift.

**B. Loss of Medicaid Expansion Funding Will Result in Significant Harm to Ohio’s Competitive Standing in the Healthcare Industry**

Another variable related to the significantly negative impact that Ohio will experience if the Controlling Board’s action is overturned is the impact on hospitals’ access to capital. Two leading bond rating agencies, Moody’s Investors Service, Inc., and Fitch Ratings, Inc., have highlighted the negative impact on hospital finances and, ultimately, bond ratings in states that do not expand Medicaid.

Opining on the danger to hospitals in states that do not adopt Medicaid expansion, Fitch’s report indicates that “Hospitals operating in states that do not expand Medicaid . . . will have to absorb the full impact of the [ACA] reimbursement cuts but will not receive the full expected benefit of increased insured volumes.” *Adverse Expansion: Hospitals, States, and Medicaid*, Fitch Reports, Oct. 28, 2013.

Similarly, Moody’s reported in March 2013 that reductions in DSH payments to hospitals will lead to significant financial strain on not only hospitals, but also more generally, state

budgets, in states that do not expand the Medicaid program. *Medicaid and Medicare DSH Payment Reductions Could Challenge States and Hospitals*, Moody's Investors Service, available at: [https://www.moody.com/research/Moody-Medicaid-and-Medicare-DSH-payment-reductions-could-challenge-states--PR\\_268644](https://www.moody.com/research/Moody-Medicaid-and-Medicare-DSH-payment-reductions-could-challenge-states--PR_268644). States that do not expand Medicaid will either have to make up the DSH payment shortfalls to hospitals using state funds or require hospitals to absorb those costs, which will increase [bond] rating pressure on hospitals. *Id.* Bond ratings are vitally important to hospitals because they impact the cost of capital hospitals need to maintain facilities and respond to the needs of their communities.

Many Ohio hospitals rely on strong ratings from the ratings agencies like Moody's and Fitch to access capital funds and other financing to maintain quality care. Higher ratings translate to lower interest rates and more attractive financing terms, allowing hospitals to borrow funds for needed equipment, patient-care technology or capital repair and improvements at a lower cost. The financial burden imposed by Ohio hospitals if they must absorb the DSH payment shortfalls while still delivering their mission-based charity care will cause reductions in ratings for rated hospitals, increasing the cost of capital or, in the worse cases, making it impossible for hospitals to qualify for financing at all. Beyond rating concerns, the financial strain may make it more difficult for hospitals to satisfy financial covenants imposed by lenders under the terms of their financing arrangements, further limiting access to capital even for hospitals who do not seek ratings by the ratings agencies. Diminished bond ratings and inability to satisfy customary financial covenants demanded by lenders would render Ohio's healthcare and hospital system less competitive in the national healthcare marketplace.

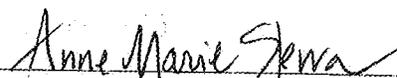
Ohio's hospitals and doctors play a pivotal role in the State's economy. If the federal Medicaid funding approved by the Controlling Board is not available, Ohio's economy and

competitiveness in the healthcare industry will suffer a serious blow, the ramifications of which will be felt both immediately and for years to come, throughout the State.

### CONCLUSION

The Controlling Board acted within its authority when it approved the Department of Medicaid's appropriation request to fund Ohio's Medicaid expansion. As a result, Relators are not entitled to the extraordinary relief they have requested.

Respectfully submitted,



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*Counsel for Amici Curiae, Ohio Hospital  
Association, Ohio State Medical Association,  
and Ohio Osteopathic Association*

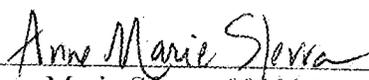
Sean McGlone (0075698)  
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155 E. Broad St., Suite 301  
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*Of Counsel to Amici Curiae, Ohio Hospital  
Association*

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Brief of Amici Curiae, Ohio Hospital Association, Ohio State Medical Association, and Ohio Osteopathic Association in Support of Respondents was sent via regular U.S. mail, postage prepaid on November 25, 2013, to the following:

Maurice A. Thompson  
1851 Center for Constitutional Law  
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Columbus, Ohio 43215  
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Ryan L. Richardson  
Charity S. Robl  
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30 East Broad Street, 17<sup>th</sup> Floor  
Columbus, Ohio 43215  
*Counsel for Respondents*

  
\_\_\_\_\_  
Anne Marie Sterra (0080855)

# EXHIBITS

Exhibit No.

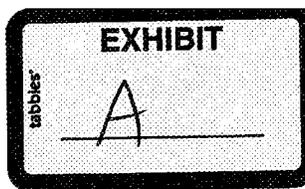
Fund/Appropriation Request and Approval - \$30 million transfer of Medicaid ..... A  
funds requested by Department of Drug and Alcohol Addiction Services,  
June, 2012

Fund/Appropriation Request and Approval -- to increase appropriation authority .....B  
for enhanced federal reimbursement by Department of Aging, November, 2012

Fund Appropriation Request and Approval -- to expend \$100 million in federal.....C  
"Race to the Top" funds, November, 2010

Ohio Hospital Association Fact Sheet -- State Budget 2014-15 Medicaid Expansion..... D

Affidavit of Ryan Biles .....E



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STATE OF OHIO  
 CONTROLLING BOARD  
 30 East Broad Street, 34th Floor  
 Columbus, Ohio 43215-3457  
 (614) 466-5721 FAX:(614) 466-3813

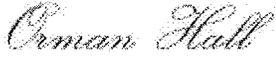
**FUND/APPROPRIATION REQUEST**

Controlling Board No.  
**ADA0100057**

Status: Approved  
 Meeting Date: 6/11/2012

GENERAL INFORMATION		
<b>Agency</b> Alcohol and Drug Addiction Services	<b>Authorization Requested Pursuant to Revised Code Section 131.35</b>	<b>Fiscal Year(s)</b>  2013
<b>Division/Institution</b> Fiscal	<input checked="" type="checkbox"/> Increase Appropriation Authority <input type="checkbox"/> Create a New Fund <input type="checkbox"/> Establish Appropriation Authority	<b>Bill No.</b>  H. B. 153

FUNDING INFORMATION							
Fund Group	Fund Code	Appropriation Line Item	Fund/Appropriation Line Item Name	FY	Current Appropriation Amount	Amount of Increase or New Fund	Total Appropriation Amount
	3J80	038610	MEDICAID	2013	\$0.00	\$30,000,000.00	\$30,000,000.00

SIGNATURES	
 _____ Agency Director or Authorized Agent  06/04/2012 _____ Date	06/11/2012  _____ On The Date Of   _____ Controlling Board President/OBM Director

AGENCY CONTACT	
Name: Mei King	Title: Budget & Subsidy Manager
Phone: (614) 728 - 6171	Fax: (614) 644 - 9116
E-Mail: mei.king@ada.ohio.gov	

**REQUIRED EXPLANATION OF REQUEST**

The Ohio Department of Alcohol and Drug Addiction Services (ODADAS) respectfully requests Controlling Board approval to increase appropriation authority in the amount of \$30,000,000.00 for FY 2013 for Fund 3J80, line item 038610, MEDICAID.

The Department is seeking Controlling Board approval for increased spending authority for the Medicaid Federal Financial Participation (FFP) reimbursement line item. Beginning in FY 12 both ODMH and ODADAS took responsibility for making Medicaid payments through enactment of Section 337.30.30 of H.B.153 of the 129th General Assembly (biennial budget act). Previously, local ADAMHS/ADAS boards used certain GRF and local funds to make Medicaid payments.

In FY 12, the biennial budget implemented what has been referred to as "Medicaid Elevation," meaning that the State has taken responsibility for making Medicaid payments and no local funds are at risk to be used for Medicaid purposes. Fiscal Year 2012 has been a transition year whereby both ODMH and ODADAS fiscal divisions have served as pass-through entities between the Ohio Department of Job and Family Services (ODJFS) and the local boards. The payment process flows from ODJFS to ODADAS/ODMH to the local alcohol, drug addiction and mental health services (ADAMH) boards, who act as the fiscal agent for making Medicaid payments to the providers, on the state's behalf. Reimbursement (FFP) is earned from payments made for services rendered through FY 12.

Medicaid claims have 365 days from the date of service to be paid. During the development of the biennial budget, it was unknown what the process would be for paying the Medicaid billable services (claims) with a date of service in FY 12 that will be billed and paid in FY 13. Therefore, the FY 13 appropriation amount is \$0 in the line item that receives FFP reimbursement. Additional spending authority is needed so that the required reimbursement can be received into the line item, and then payments can be disbursed out to the boards for payment to the providers. ODADAS estimates this amount to

be approximately \$30 million, to pay for Medicaid billable services provided in FY 12 that will be billed in FY 13.

Attachments		Controlling Board Request No.: ADA010057
Attachment Type	Attachment Description	
No attachments found.		

Fund/Appropriation Request Required Information Controlling Board Request No.: ADA0100057

1. Identify the source of additional revenue (e.g., increase in fee, increase in state or federal grants, etc.).  
The source of additional revenue is Medicaid reimbursement (FFP) from payments made for services rendered in FY 12.
2. If applicable, explain why creating and/or increasing a new fund and/or line item is more appropriate than depositing the revenue into an existing fund and increasing the appropriation authority of an existing line item.  
N/A
3. Time line: Has the revenue been received?  
No  
When is the revenue expected to become available?  
Earned revenue will be deposited in the first quarter of FY 13.
4. For federal funds only, provide the following information:
  - a. Grant identification number from the Catalog of Federal Domestic Assistance: CFDA# 93.778
  - b. Amount of state matching funds required: 0
  - c. Source (appropriation line item) of that match:
  - d. Statutory or executive authority for participation in the program:

Include a brief summary of the text or a copy of the reference.

5. How will the additional appropriation and/or cash be used?  
The additional funds will be distributed to the ADAMHS Boards for Medicaid claims with dates of service prior to 7/1/2012.

Provide the following information below relative to this budgetary adjustment. NOTE: If a new fund and new appropriation authority are being requested, the "Current" and "Requested" columns are not required.

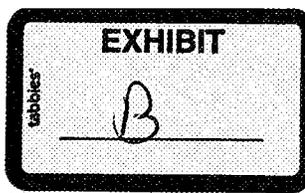
Account Category	Account Category Description	Current Appropriation Authority	Requested Increase in Appropriation	Total Appropriation Authority
500	Personal Services - Payroll	\$0.00	\$0.00	\$0.00
510	Purchases Personal Services and Others	\$0.00	\$0.00	\$0.00
520	Supplies and Maintenance	\$0.00	\$0.00	\$0.00
530	Equipment	\$0.00	\$0.00	\$0.00
550	Subsidies and Shared Revenue	\$0.00	\$30,000,000.00	\$30,000,000.00
570	Capital Items	\$0.00	\$0.00	\$0.00
590	Judgements, Settlements and Bonds	\$0.00	\$0.00	\$0.00
Other	Other	\$0.00	\$0.00	\$0.00
<b>Total:</b>		<b>\$0.00</b>	<b>\$30,000,000.00</b>	<b>\$30,000,000.00</b>

6. For each additional amount shown in the table, provide a short description of what the dollars will be used to accomplish. For example, if increasing a subsidy account category, provide detail on the added recipients or the allocation formula for distribution of moneys. For Account Category 500, respond to specific questions in number 9 below.

Account Category	Short Description
500	
510	
520	
530	
550	The additional funds will be distributed to the ADAMHS Boards for Medicaid claims with dates of service prior to 7/1/2012.
570	
590	
Other	

7. Will this transfer be used to maintain current service levels, expand an existing program or activity, or begin a new program?  
 Explain.  
 N/A
8. Based upon the response to number 7, explain how these services or programs would have been funded if this additional funding were not available.  
 Without this spending authority, the department would not be able to disburse funds to the community mental health boards to make the necessary Medicaid payments.
9. Account Category 500-Personal Services:  
 a. Explain why changes are being requested in the personal services account category 500.
- b. How many existing staff are being affected by this transfer? 0  
 What appropriation line item are they currently being paid?
- c. How would these existing staff have been affected if these additional funds were not available?
- d. Will new staff be hired as a result of the additional funds?
10. List any other transfers involving these appropriation line items and/or cash approved by the Controlling Board in the current biennium, including the date and requested amount of the adjustment(s).

ALI	Transfer Date	Transfer Amount	CBR Number
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FUND/APPROPRIATION REQUEST

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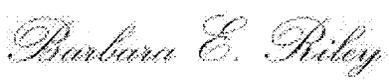
STATE OF OHIO  
 CONTROLLING BOARD  
 30 East Broad Street, 34th Floor  
 Columbus, Ohio 43215-3457  
 (614) 466-5721 FAX:(614) 466-3813

Controlling Board No.  
**AGE0100022**

Status: Approved  
 Meeting Date: 12/13/2010

GENERAL INFORMATION		
<b>Agency</b> Aging	<b>Authorization Requested Pursuant to Revised Code Section 131.35</b> <input checked="" type="checkbox"/> Increase Appropriation Authority <input type="checkbox"/> Create a New Fund <input type="checkbox"/> Establish Appropriation Authority	<b>Fiscal Year(s)</b> 2011  <b>Bill No.</b> HB 1
<b>Division/Institution</b> Department of Aging		

FUNDING INFORMATION							
Fund Group	Fund Code	Appropriation Line Item	Fund/Appropriation Line Item Name	FY	Current Appropriation Amount	Amount of Increase or New Fund	Total Appropriation Amount
	4J40	490610	PASSPORT/RESIDENTIAL ST SPLMNT	2010	\$38,563,984.00	\$0.00	\$38,563,984.00
				2011	\$33,263,984.00	\$15,000,000.00	\$48,263,984.00
	3C40	490623	Long Term Care Budget	2010	\$409,716,703.00	\$0.00	\$409,716,703.00
				2011	\$340,193,418.00	\$80,000,000.00	\$420,193,418.00

SIGNATURES	
 _____ Agency Director or Authorized Agent  11/22/2010 _____ Date	12/13/2010  _____ On The Date Of   _____ Controlling Board President/OBM Director

AGENCY CONTACT	
Name: Kevin E Blade	Title: FISCAL CHIEF
Phone: (614) 466 - 8687	Fax: (614) 728 - 6802
	E-Mail: KBlade@age.state.oh.us

**REQUIRED EXPLANATION OF REQUEST**

Aging requests Controlling Board approval to increase appropriation authority in the amount of \$15,000,000.00 in fund 4J40, line item 490610, PASSPORT Residential State Supplement and in the amount of \$80,000,000.00 in fund 3C40, line item 490623, Long-term Care Budget.

This increase would allow open enrollment in all of AGE's Medicaid programs - PASSPORT, Choices, Assisted Living and PACE in FY 2011.

In February 2010 Governor Strickland called for the elimination of program waiting lists. As a result, AGE is able to provide services based on choice and need, allowing consumers to remain in their homes and communities, and prevent increased costs for nursing facility use. AGE notified both the Ohio Department of Job and Family Services and the Governor's office that AGE's ability to enroll all eligible participants would require a transfer of funds from ODJFS (Fund 5R20) to AGE (Fund 4J40). With this transfer of funds, AGE will need increased appropriation authority for enhanced federal reimbursement.

Attachments		Controlling Board Request No.: AGE0100022
Attachment Type	Attachment Description	
Legislation	HBi 173.40 to 173.403 - PASSPORT and Choices	
Legislation	HB1 - 173.50 - PACE	
Legislation	HB1 5111.89 - Assisted Living	
Legislation	HB1 - Section 209.40	

Fund/Appropriation Request Required Information Controlling Board Request No.: AGE0100022

1. Identify the source of additional revenue (e.g., increase in fee, increase in state or federal grants, etc.).  
 Funds transferred from the Medicaid-Nursing Facilities Fund (Fund 5R20), used by the Department of Job and Family Services. The spending authority increase to ALI 490-623 is funded by higher than budgeted eFMAP, faster processing of federal reimbursement and more federal revenue resulting from the higher spending for Long-Term Care Budget Services.
2. If applicable, explain why creating and/or increasing a new fund and/or line item is more appropriate than depositing the revenue into an existing fund and increasing the appropriation authority of an existing line item.  
 Not applicable.
3. Time line: Has the revenue been received?  
 No  
 When is the revenue expected to become available?  
 JFS collects funds in SSR Fund 5R20 quarterly. Federal revenue is deposited weekly in Aging's Fund 3C40.
4. For federal funds only, provide the following information:
  - a. Grant identification number from the Catalog of Federal Domestic Assistance: 93.778
  - b. Amount of state matching funds required: \$15,000,000.00
  - c. Source (appropriation line item) of that match: 490610
  - d. Statutory or executive authority for participation in the program:  
 Section 209.40 of Am.Sub. HB1, as amended. Ohio Revised Code Sections: 173.40 - PASSPORT, 173.403 - Choices, 173.50 - PACE, and 5111.89 - Assisted Living Program.  
  
 Include a brief summary of the text or a copy of the reference.
5. How will the additional appropriation and/or cash be used?  
 None of the increase will be used for state administration. The funds will allow AGE's Long-term Care Services programs to continue at natural levels.

Provide the following information below relative to this budgetary adjustment. NOTE: If a new fund and new appropriation authority are being requested, the "Current" and "Requested" columns are not required.

Account Category	Account Category Description	Current Appropriation Authority	Requested Increase in Appropriation	Total Appropriation Authority
500	Personal Services - Payroll	\$5,150,000.00	\$0.00	\$5,150,000.00
510	Purchases Personal Services and Others	\$415,000.00	\$0.00	\$415,000.00
520	Supplies and Maintenance	\$640,000.00	\$0.00	\$640,000.00
530	Equipment	\$95,000.00	\$0.00	\$95,000.00
550	Subsidies and Shared Revenue	\$364,322,402.00	\$95,000,000.00	\$459,322,402.00
570	Capital Items	\$0.00	\$0.00	\$0.00
590	Judgements, Settlements and Bonds	\$2,835,000.00	\$0.00	\$2,835,000.00
Other	Other	\$0.00	\$0.00	\$0.00
<b>Total:</b>		<b>\$373,457,402.00</b>	<b>\$95,000,000.00</b>	<b>\$468,457,402.00</b>

6. For each additional amount shown in the table, provide a short description of what the dollars will be used to accomplish. For example, if increasing a subsidy account category, provide detail on the added recipients or the allocation formula for distribution of moneys. For Account Category 500, respond to specific questions in number 9 below.

Account Category	Short Description
500	Not applicable.
510	Not applicable.
520	Not applicable.
530	Not applicable.
550	Cover costs of Long-term Care Services participants.
570	Not applicable.
590	Not applicable.

Other:  Not applicable.

7. Will this transfer be used to maintain current service levels, expand an existing program or activity, or begin a new program? Explain.

This transfer will allow AGE's Long-term Care Services programs to continue at natural levels in FY 2011.

8. Based upon the response to number 7, explain how these services or programs would have been funded if this additional funding were not available.

AGE would resort to waiting lists to limit enrollment in the Long-term Care Services programs.

9. Account Category 500-Personal Services:

a. Explain why changes are being requested in the personal services account category 500.

Not applicable.

b. How many existing staff are being affected by this transfer? 0

What appropriation line item are they currently being paid?

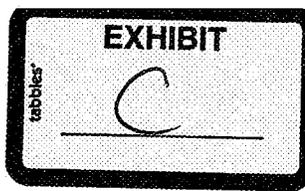
c. How would these existing staff have been affected if these additional funds were not available?

Not applicable.

d. Will new staff be hired as a result of the additional funds? No

10. List any other transfers involving these appropriation line items and/or cash approved by the Controlling Board in the current biennium, including the date and requested amount of the adjustment(s).

ALI	Transfer Date	Transfer Amount	CBR Number
490610	03/08/2010	\$4,809,076.00	AGE0100018
490610	04/19/2010	\$4,809,076.00	OBM0100042
490623	03/08/2010	\$38,993,600.00	AGE0100018



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 Controlling Board No. **EDU0100145**

STATE OF OHIO  
 CONTROLLING BOARD  
 30 East Broad Street, 34th Floor  
 Columbus, Ohio 43215-3457  
 (614) 466-5721 FAX:(614) 466-3813

**FUND/APPROPRIATION REQUEST**

Status: Approved  
 Meeting Date: 11/22/2010

**GENERAL INFORMATION**

<b>Agency</b> Education	<b>Authorization Requested Pursuant to Revised Code Section 131.35</b>	<b>Fiscal Year(s)</b>
<b>Division/Institution</b> Education	<input type="checkbox"/> Increase Appropriation Authority <input checked="" type="checkbox"/> Create a New Fund <input checked="" type="checkbox"/> Establish Appropriation Authority	2011
		<b>Bill No.</b> H.B. 1

**FUNDING INFORMATION**

Fund Group	Fund Code	Appropriation Line Item	Fund/Appropriation Line Item Name	FY	Current Appropriation Amount	Amount of Increase or New Fund	Total Appropriation Amount
	3FD0	200665	Race to the Top	2010	\$0.00	\$0.00	\$0.00
				2011	\$0.00	\$100,000,000.00	\$100,000,000.00

**SIGNATURES**

<p><i>Deborah S. Delisle</i></p> <p>-----                  Agency Director or Authorized Agent</p> <p style="text-align: center;">11/02/2010</p> <p>-----                  Date</p>		<p style="text-align: right;">11/22/2010</p> <p style="text-align: center;">-----                  On The Date Of</p> <p style="text-align: center;"><i>Joe Sequest</i></p> <p style="text-align: center;">-----                  Controlling Board President/OBM Director</p>
---	--	--

**AGENCY CONTACT**

Name: Gregory D Dennis Title: Legislative Liaison  
 Phone: (614) 644 - 2602 Fax: (614) 728 - 5453 E-Mail: Gregory.Dennis@ode.state.oh.us

**REQUIRED EXPLANATION OF REQUEST**

Education requests Controlling Board approval to create a new fund and establish appropriation authority in the amount of \$100,000,000.00 in fund 3FD0, line item 200665, Race to the Top.

The appropriation will be used to fund the Race to the Top grant program designed to encourage and reward states that are creating the conditions for education innovation and reform achieving significant improvement in student outcomes, including making substantial gains in student achievement, closing achievement gaps, improving high school graduation rates, and ensuring student preparation for success in college and careers.

This program is funded by the U.S. Department of Education under the American Recovery and Reinvestment Act, Public Law 111-5.

A significant portion of the funding will be distributed to Local Education Agencies (LEAs ) by formula, which is a percentage share of their Title IA grant allocation. The remaining funds will be use for statewide purposes for fulfilling the assurance areas of the grant. These include: Standards and Assessments, Data Systems, Great Teachers and Leaders, and Lowest Achieving Schools.

The cover letter to the attached grant award states that \$50 million is available to be drawn down at this time. The USDOE must approve state and local education agency scopes of work prior to the release of additional funds. The total grant award is \$400 million, approved over a 4-year time period. Scopes of work are due to the USDOE by late November and we expect the release of remaining funds to occur in late December or the early part of 2011.

Attachments		Controlling Board Request No.: ED00100145
Attachment Type	Attachment Description	
Catalogue of Federal Domestic Assistance (CFDA) excerpt	Race to the Top-Grant Award Information	

Fund/Appropriation Request Controlling Board Request No.: EDU0100145  
 Required Information

1. Identify the source of additional revenue (e.g., increase in fee, increase in state or federal grants, etc.).  
 the successful Race to the Top application to the U.S. Department of Education
2. If applicable, explain why creating and/or increasing a new fund and/or line item is more appropriate than depositing the revenue into an existing fund and increasing the appropriation authority of an existing line item.  
 The grant is new, ARRA-based award and requires compliance with federal ARRA reporting.
3. Time line: Has the revenue been received?  
 No  
 When is the revenue expected to become available?  
 drawn from the USDE G-5 Payments Module as needed
4. For federal funds only, provide the following information:
  - a. Grant identification number from the Catalog of Federal Domestic Assistance: 84.395A
  - b. Amount of state matching funds required: 0
  - c. Source (appropriation line item) of that match: n/a
  - d. Statutory or executive authority for participation in the program:  
 CFDA data sheet attached.

Include a brief summary of the text or a copy of the reference.  
 Award letter attached
5. How will the additional appropriation and/or cash be used?  
 Fulfill obligations under approved grant application

Provide the following information below relative to this budgetary adjustment. NOTE: If a new fund and new appropriation authority are being requested, the "Current" and "Requested" columns are not required.

Account Category	Account Category Description	Current Appropriation Authority	Requested Increase in Appropriation	Total Appropriation Authority
500	Personal Services - Payroll	\$0.00	\$4,000,000.00	\$4,000,000.00
510	Purchases Personal Services and Others	\$0.00	\$33,000,000.00	\$33,000,000.00
520	Supplies and Maintenance	\$0.00	\$3,000,000.00	\$3,000,000.00
530	Equipment	\$0.00	\$225,000.00	\$225,000.00
550	Subsidies and Shared Revenue	\$0.00	\$59,775,000.00	\$59,775,000.00
570	Capital Items	\$0.00	\$0.00	\$0.00
590	Judgements, Settlements and Bonds	\$0.00	\$0.00	\$0.00
Other	Other	\$0.00	\$0.00	\$0.00
<b>Total:</b>		<b>\$0.00</b>	<b>\$100,000,000.00</b>	<b>\$100,000,000.00</b>

6. For each additional amount shown in the table, provide a short description of what the dollars will be used to accomplish. For example, if increasing a subsidy account category, provide detail on the added recipients or the allocation formula for distribution of moneys. For Account Category 500, respond to specific questions in number 9 below.

Account Category	Short Description
500	Technical assistance and implementation staff
510	Contracts for IT, and program services for state share of race to the top.
520	DAS, Internal and IT, etc. charges for grant.
530	Computer equipment for staffing
550	Subsidy sent to participating LEAs.
570	
590	
Other	

7. Will this transfer be used to maintain current service levels, expand an existing program or activity, or begin a new program?

Explain.  
funds will expand and implement education reform for Race to the Top

8. Based upon the response to number 7, explain how these services or programs would have been funded if this additional funding were not available.  
These activities would not be executed

9. Account Category 500-Personal Services:

a. Explain why changes are being requested in the personal services account category 500.

New staff are being paid for program implementation.

b. How many existing staff are being affected by this transfer? 0

What appropriation line item are they currently being paid? n/a

c. How would these existing staff have been affected if these additional funds were not available?

n/a

d. Will new staff be hired as a result of the additional funds? Yes

If so, how many? 32

e. How will these additional staff members and their associated operating expenses be paid for in subsequent fiscal years?

These positions are exclusively for the time period for the term of the grant

10. List any other transfers involving these appropriation line items and/or cash approved by the Controlling Board in the current biennium, including the date and requested amount of the adjustment(s).

ALI	Transfer Date	Transfer Amount	CBR Number
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### OHA Position:

**Hospitals strongly support responsible Medicaid expansion in Ohio.** Expanding Medicaid to every citizen in Ohio with income up to 138 percent of federal poverty guidelines will not be without challenges, but Ohio hospitals believe the benefits justify the expansion, and look forward to working with Ohio's leaders on this issue.

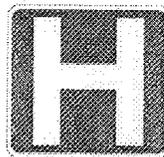
### Ohio Medicaid

A state and federally funded program that guarantees health care coverage to eligible low-income and medically vulnerable people.

- **2.2 million Ohioans** enrolled.
- Medicaid patients account for about **16%** of a typical Ohio hospital's admissions, outpatient & ED visits.
- **\$1.3 billion** loss to Ohio hospitals in 2010.

### EXPANSION BENEFITS

- Expansion would provide **1.6 million** Ohioans with Medicaid coverage.
- States may voluntarily expand eligibility in 2014 to uninsured adults with incomes up to 138 percent of the federal poverty level.
- The federal government would pay 100 percent of the cost for expanding Medicaid eligibility through 2016, with a gradual reduction to paying 90 percent of the cost in 2017 and thereafter.



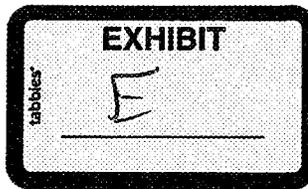
### MEDICAID HOSPITAL REIMBURSEMENT



**Ohio Medicaid** reimburses Ohio hospitals **.83 cents** for each dollar it costs to treat Medicaid beneficiaries

### OHIO UNINSURED & HOSPITALS

- Ohio hospitals are required to provide **medically necessary care, free of charge**, to uninsured individuals with incomes at or below the federal poverty line.
- When uninsured patients can't pay for their emergency care, **hospitals must make up losses** by charging more or eliminating services or community programs.
- Uninsured patients wait to seek medical treatment until their situation worsens, requiring ER care, a costly option for both them and the safety net hospitals that serve them.
- Ohio hospitals provided **\$1.1 billion** in total charity care and incurred **\$645 million** in bad debt in 2010.



IN THE SUPREME COURT OF OHIO

State, ex rel. Cleveland Right to Life, Inc., et al., Relators, v. State of Ohio Controlling Board, et al. Respondents. Case No. 13-1668 Original Action in Mandamus and Prohibition

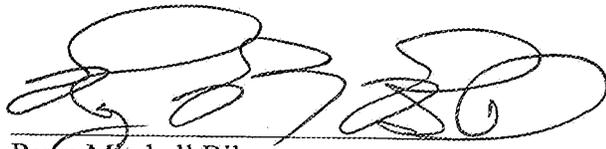
AFFIDAVIT OF RYAN MITCHELL BILES

State of Ohio ) ) ss. County of Franklin )

Ryan Mitchell Biles, having been duly sworn, states as follows:

- 1. I have been employed by the Ohio Hospital Association ("OHA") for thirteen years and currently am OHA Senior Vice President, Health Economics and Policy.
2. In order to educate and prepare its members for the federal reimbursement cuts to Medicaid under the Affordable Care Act ("ACA"), the OHA performed an economic analysis to determine Ohio specific Medicaid Disproportionate Share Hospital ("DSH") program and other federal reimbursement cuts, based on the Congressional Budget Office's national estimates.
3. As part of the OHA analysis, it contracted with the Hospital Association of New York to perform a Medicare Payment Forecast Analysis for Ohio, under the ACA for the years 2013 - 2022.
4. Based on the OHA's analysis, total DSH and other federal reimbursement cuts to Ohio hospitals, under the ACA, are estimated to be \$7.4 billion over the next ten years.
5. The OHA also performed an analysis to estimate the amount Ohio hospitals will receive per year for services to 275,000 newly-covered Medicaid patients under Medicaid expansion in Ohio. Based on its analysis, the OHA estimates that Ohio hospitals will receive \$800 million per year over ten years for services to these newly-covered Medicaid patients.

6. Of the approximately \$1.2 billion in uncompensated care provided by Ohio hospitals to the uninsured, \$571 million was for free care to Ohio residents with income at or below the federal poverty level, as reported for the state fiscal year 2012 in Medicaid cost reports filed by Ohio hospitals. Additionally, Ohio hospitals reported having provided another \$590 million to uninsured patients with income above 100% of the federal poverty level.
7. The OHA analyses mentioned herein were performed long before this litigation and without knowledge that there would be litigation related to Medicaid expansion in Ohio.
8. I have personal knowledge of the matters set forth herein, including the analyses described above and the Medicaid costs reports filed by Ohio hospitals.



Ryan Mitchell Biles

Sworn to and subscribed before me a notary public this 25<sup>th</sup> day of November, 2013.



Notary Public



SEAN MCGLONE  
Attorney at Law  
Notary Public, State of Ohio  
My Commission has no expiration  
Section 147.03 R.C.