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## Bill Analysis

**Version:** As Introduced

**Primary Sponsor:** Sen. Schaffer

Jason Hoskins, Attorney

### SUMMARY

#### **Supplemental Nutrition Assistance Program eligibility**

- Prohibits the Ohio Department of Job and Family Services (ODJFS) from exercising state options regarding household Supplemental Nutrition Assistance Program (SNAP) income and asset calculation.
- Prohibits ODJFS from exercising a simplified reporting system for SNAP.
- Prohibits SNAP income and asset limits from exceeding the types and allowable amounts permitted by the Secretary of the U.S. Department of Agriculture.
- Requires that, as a condition of SNAP eligibility, certain individuals cooperate with ODJFS regarding (1) establishing paternity and (2) establishing, modifying, and enforcing a child support order.
- Requires ODJFS to prepare and submit a quarterly report detailing certain information regarding SNAP.

#### **Supplemental Nutrition Assistance Program debit cards**

- Requires that the front of a SNAP debit card include a color photograph of at least one adult member of the household.
- Exempts from this requirement a SNAP debit card issued to a household that (1) does not include any adults or (2) includes adults but they are 60 years of age or older, blind, disabled, victims of domestic violence, or who have religious objections to being photographed.
- Permits an exempt adult to have a color photograph included on the front of a SNAP debit card.

- Permits the Registrar of Motor Vehicles, or an employee or contractor of the Bureau of Motor Vehicles (BMV), to disclose an individual's photograph or digital image to ODJFS for purposes of this requirement.
- Requires that the back of a SNAP debit card include information about how to report suspected SNAP fraud.
- Requires ODJFS to consult with the BMV and U.S. Food and Nutrition Service to develop a strategy for issuing SNAP debit cards that meet these requirements.
- Applies these requirements to new SNAP debit cards beginning six months after the implementation strategy is developed.
- Requires that SNAP debit cards issued before that date be replaced with debit cards meeting the requirements not later than 12 months after the implementation strategy is developed.

### **Work and education requirement for Medicaid**

- Revises the work and education requirement for individuals who enroll in Medicaid under the expansion eligibility group.
- Requires that an individual be employed at least 20 hours per week or enrolled in an accredited institution of higher education or an occupational training program to satisfy the requirement.
- Raises to 65 (from 55) the age an individual must be to be exempt from the requirement on the basis of age.
- Requires that an individual exempt on the basis of having an intensive physical health care need or serious mental illness be medically certified as physically or mentally unfit for employment because of the condition.
- Creates a new exemption for an individual who personally provides care for a child under one year of age or a child who has a medical condition or disability that the Medicaid Director determines is serious enough to warrant an exemption.
- Expands the work and education requirement to apply to individuals who enroll in Medicaid under the parents and other caretaker relatives eligibility group.

### **Medicaid eligibility**

- Prohibits the Ohio Department of Medicaid (ODM) from taking certain actions with regard to determining eligibility for the Medicaid Program.
- Requires ODM to take certain actions in the event that the Department receives federal funding for the Medicaid Program that is contingent upon a temporary maintenance of effort restriction or other restriction that limits ODM's ability to disenroll ineligible Medicaid recipients.

- Requires the Medicaid Director to seek a waiver from the U.S. Centers for Medicare and Medicaid Services regarding the eligibility of certain Medicaid recipients.
- Requires the Medicaid Director to enter into several data matching agreements for the purpose of determining eligibility of certain Medicaid recipients.

## **Unemployment compensation**

- Requires the ODJFS Director to check the Ohio New Hire Reporting Center, the National Directory of New Hires, and the Integrity Data Hub when determining whether an initial application is valid or whether a first claim or additional claim qualifies an individual for benefits.
- Requires the ODJFS Director to enter a data matching agreement with the Department of Rehabilitation and Correction under which the DRC Director provides the ODJFS Director with a searchable list identifying all persons committed to DRC institutions.
- Requires the ODJFS Director to check the list of people committed to DRC institutions when determining whether to approve an unemployment benefit application.
- Requires the ODJFS Director to develop a written policy regarding the recovery of unemployment benefit overpayments and specifies the contents of the policy.
- Requires the ODJFS Director to prepare an annual report explaining the rate of consistency in performing the checks required by the bill and other activities related to preventing and reducing benefit overpayments.
- Requires the Director to submit that report to the Senate President, Speaker of the House, and chairs of the standing committees of the House and Senate to which unemployment legislation is customarily referred.

## **Delayed effective date**

- Delays the bill’s effective date until January 1, 2022.

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## DETAILED ANALYSIS

### Supplemental Nutrition Assistance Program eligibility

The Supplemental Nutrition Assistance Program (SNAP), formerly known as the Food Stamp Program, is a federal program administered by states to provide low-income individuals with electronic benefit transfer cards used to purchase food. Eligibility rules and benefit levels are set by the federal government and are generally uniform across the nation. The program is administered in Ohio by the Department of Job and Family Services (ODJFS), pursuant to federal law and regulations promulgated, and policy guidance provided, by the Food and Nutrition Service in the U.S. Department of Agriculture (USDA).<sup>1</sup> Federal law provides state agencies with various policy options that enable state agencies to adapt their programs to meet the unique needs of states.<sup>2</sup> In Ohio, SNAP provides benefits to nearly 1.5 million people in more than 700,000 households.<sup>3</sup> The bill imposes certain requirements and prohibitions on ODJFS in administering SNAP, specifically in the areas of (1) calculating income and asset limits and (2) eligibility requirements.

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<sup>1</sup> R.C. 5101.54.

<sup>2</sup> USDA, Food and Nutrition Service, *State Options Report* (Revised May 31, 2018), available at <https://fns-prod.azureedge.net/sites/default/files/snap/14-State-Options.pdf>.

<sup>3</sup> Caseload Summary Statistics Report, ODJFS, November 2020.

## Income and asset limits

SNAP eligibility and benefits are calculated on a household basis. To be eligible for SNAP, household gross monthly income must be at or below 130% of the federal poverty level, and household net monthly income (after specified deductions) must be at or below 100% of the federal poverty level. Income from all sources is generally counted, including all of the following:

- Earned income;
- Unearned income (such as cash assistance);
- Social Security;
- Unemployment;
- Child support.

Additionally, a household's assets must be below \$2,250 for most households, and below \$3,500 if the household has an elderly or disabled member.<sup>4</sup> Generally, assets are resources that are available to the household to purchase food, such as funds in bank accounts. Assets that are not accessible, such as retirement savings or real estate, are not counted. The USDA Secretary is tasked with prescribing the types and allowable amounts of financial resources an eligible household may own and sell.<sup>5</sup>

The bill prohibits ODJFS from exercising certain state options regarding calculating household income and assets. Under federal law, states may relax the limits for purposes of determining SNAP eligibility by excluding any additional income and assets the state excludes when determining eligibility for other means-tested benefit programs like cash assistance or Medicaid for low-income parents.<sup>6</sup> The bill prohibits ODJFS from exercising these state options and provides that the SNAP income limits implemented by ODJFS cannot exceed the types and allowable amounts established by the USDA Secretary.<sup>7</sup>

## Change reporting

The bill prohibits ODJFS from implementing simplified reporting procedures for households receiving SNAP benefits. Generally, federal law requires households to report a change in circumstances, such as a change in income, as those events occur.<sup>8</sup> States do, however, have an option to implement a simplified reporting structure, where a household is

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<sup>4</sup> USDA, letter to SNAP regional directors, *SNAP – Fiscal Year 2021 Cost-of-Living Adjustments*, July 29, 2020, available at <https://www.fns.usda.gov/snap/fiscal-year-2021-cost-living-adjustments>.

<sup>5</sup> 7 United States Code (U.S.C.) 2014(g)(1).

<sup>6</sup> 7 U.S.C. 2014; 7 Code of Federal Regulations (C.F.R.) 273.8(e)(19) and 273.9(c)(19).

<sup>7</sup> R.C. 5101.546(B).

<sup>8</sup> 7 C.F.R. 273.12(a)(1).

not required to report events like a change in household income during the household's certification period.<sup>9</sup> The bill requires any household to report a change to ODJFS within ten days of the change becoming known to the household.<sup>10</sup>

### **Categorically eligible households**

The bill prohibits ODJFS from considering a household to be categorically eligible if the household receives certain types of income. Under federal law and regulations, certain households are "categorically eligible" for SNAP because the household has already been determined eligible for another means-tested benefit program (for example, if all members of the household receive Supplemental Security Income (SSI) or Temporary Assistance for Needy Families (TANF) assistance). SNAP income and asset requirements are waived for categorically eligible households.<sup>11</sup> The bill prohibits ODJFS from considering a household categorically eligible if any household member receives any noncash, in-kind, or other similar benefit.<sup>12</sup> As a result, the SNAP income and asset requirements will no longer be waived for those households.

The bill removes a corresponding provision of existing law that authorizes ODJFS to operate a simplified SNAP program under which the requirements governing the Ohio Works First program apply to SNAP recipients who also receive cash assistance.<sup>13</sup>

### **Cooperation with child support agencies**

Under federal law, states have the option to exclude certain individuals from SNAP eligibility if they do not cooperate with the state child support agency regarding establishing paternity and establishing, modifying, and enforcing a child support order.<sup>14</sup> This requirement applies both to "custodial parents" (defined federally as a natural or adoptive parent or other caregiver who lives with his or her minor child) and "noncustodial parents" (a parent who does not live with his or her minor child). The bill requires ODJFS to mandate that, as a condition of SNAP eligibility, these individuals must cooperate with ODJFS regarding (1) establishing paternity and (2) establishing, modifying, and enforcing a child support order.<sup>15</sup>

### **Rulemaking authority**

Continuing law authorizes ODJFS to adopt rules to administer the SNAP program. The bill requires the rules to be consistent with its provisions.<sup>16</sup>

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<sup>9</sup> 7 C.F.R. 273.12(a)(5) and (6).

<sup>10</sup> R.C. 5101.545.

<sup>11</sup> 7 C.F.R. 273.2(j)(2) and (4).

<sup>12</sup> R.C. 5101.546(B).

<sup>13</sup> R.C. 5101.54(A)(9).

<sup>14</sup> 7 C.F.R. 273.11(o) and (p).

<sup>15</sup> R.C. 5101.547.

<sup>16</sup> R.C. 5101.54(A)(7) and (8).

## **ODJFS SNAP report**

The bill requires ODJFS to compile a report detailing the implementation and enforcement of SNAP policies in the state. The report must include all of the following information:

- The number of households investigated for fraud or an intentional program violation;
- The number of investigations referred to the Attorney General for prosecution;
- Any improper program payments or expenditures and the total amount of money recovered from those payments or expenditures;
- Data concerning improper program payments and ineligible recipients; and
- The aggregate amount of funds spent by Ohio SNAP recipients through electronic benefit card transactions in states other than Ohio.

Beginning January 1, 2023, ODJFS must submit this report on a quarterly basis to the Speaker of the House of Representatives, the Senate President, and the members of the standing legislative committees that have jurisdiction over SNAP.<sup>17</sup>

## **Supplemental Nutrition Assistance Program debit cards**

The bill establishes two requirements for debit cards used to access SNAP benefits. First, the bill requires that the front of a SNAP debit card include a color photograph of at least one adult member of the household for which the debit card is issued, unless the household (1) does not include any adults or (2) includes adults but they are 60 years of age or older, blind, disabled, victims of domestic violence, or they have religious objections to being photographed. An exempt adult is nonetheless permitted to have a color photograph of the adult included on the front of a SNAP debit card.<sup>18</sup> The Registrar of Motor Vehicles, or an employee or contractor of the Bureau of Motor Vehicles (BMV), may disclose an individual's photograph or digital image to ODJFS for this purpose.<sup>19</sup>

The second requirement is that the back of a SNAP debit card include a telephone number that can be called to report suspected SNAP fraud and the address of a website where suspected fraud can be reported.<sup>20</sup>

## **Implementation strategy and timeline**

The bill requires ODJFS to develop a strategy for issuing SNAP debit cards that meet these requirements in consultation with the BMV and the U.S. Food and Nutrition Service (the

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<sup>17</sup> R.C. 5101.548.

<sup>18</sup> R.C. 5101.331(A), (D), and (E).

<sup>19</sup> R.C. 4501.27.

<sup>20</sup> R.C. 5101.331(A).

federal agency that administers SNAP). The implementation strategy must be developed not later than one year after the bill's effective date.<sup>21</sup>

All new SNAP debit cards must comply with the requirements beginning six months after the date ODJFS develops the implementation strategy. A SNAP debit card that is issued before that date must be replaced with a debit card that complies with the requirements not later than 12 months after the date the implementation strategy is developed if the household for which the debit card was issued continues to participate in SNAP. The bill's requirements apply to a SNAP debit card sent by ODJFS by mail to a household that is determined to be in immediate need of nutrition assistance.<sup>22</sup>

## **Rules**

The bill authorizes ODJFS to adopt rules in accordance with the Administrative Procedure Act<sup>23</sup> for the efficient administration of the requirements.<sup>24</sup>

## **Authority under federal law**

The federal Food and Nutrition Act of 2008 allows states to require that SNAP debit cards include a photograph of one or more members of a household. However, states that do so must establish procedures to ensure that any other appropriate member of the household or authorized representative may use the card.<sup>25</sup>

## **Work and education requirement for Medicaid**

The bill revises a requirement that the Medicaid Director establish a Medicaid waiver component under which individuals must satisfy a work and education requirement to enroll in Medicaid as part of the expansion eligibility group. That group consists of individuals who have income not exceeding 138% of the federal poverty level and are under 65, not pregnant, ineligible for Medicare Parts A and B, and not otherwise eligible for Medicaid.<sup>26</sup> The group is also known as Group VIII.

Current law requires the waiver to prohibit an individual from enrolling in Medicaid as part of the expansion eligibility group unless the individual is employed or enrolled in school or an occupational training program. An individual would be exempt if the individual is at least 55, is participating in an alcohol and addiction treatment program, or has intensive physical health care needs or serious mental illness.

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<sup>21</sup> R.C. 5101.331(B).

<sup>22</sup> R.C. 5101.331(C) and 5101.542.

<sup>23</sup> R.C. Chapter 119.

<sup>24</sup> R.C. 5101.33.

<sup>25</sup> 7 U.S.C. 2016(h)(9).

<sup>26</sup> 42 U.S.C. 1396a(a)(10)(A)(i)(VIII).

## Revised work and education requirement

To satisfy the work and education requirement under the bill, an individual must either be employed at least 20 hours per week, averaged monthly, or be enrolled in an accredited institution of higher education or an occupational training program.<sup>27</sup> An individual satisfies the requirement under current law by being employed or enrolled in school or an occupational training program.

## Revised exemptions

The bill raises to 65 (from 55) the age an individual must be to be exempt from the work and education requirement on the basis of age. It provides that, in order for an individual to be exempt on the basis of having an intensive physical health care need or serious mental illness, the individual must be medically certified as physically or mentally unfit for employment because of the condition. It also exempts an individual who personally provides care for a child under one year of age, a child who has a medical condition or disability that the Medicaid Director determines is serious enough to warrant an exemption, or both. The bill maintains the exemption for individuals participating in an alcohol and drug addiction treatment program.<sup>28</sup>

## Parents and other caretaker relatives eligibility group

The bill requires that the waiver also apply to the parents and other caretaker relatives eligibility group.<sup>29</sup> This group consists of parents and caretaker relatives, and their spouses, who reside with a dependent child under 18 and have income not exceeding 90% of the federal poverty level.<sup>30</sup> The terminology used to identify this group, “parents and other caretaker relatives,” is established by a federal regulation, and the bill revises a provision of current law that concerns the group to refer to the group using the federal terminology.<sup>31</sup> (See **COMMENT** below.)

## Medicaid eligibility

The bill specifies that, unless required by federal laws or regulations, the Ohio Department of Medicaid (ODM) is prohibited from doing any of the following related to Medicaid eligibility:<sup>32</sup>

- Conducting post-enrollment verification of income or nonincome-related eligibility instead of verifying income and nonincome-related eligibility before enrollment;

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<sup>27</sup> R.C. 5166.37(A)(1) and (2).

<sup>28</sup> R.C. 5166.37(B).

<sup>29</sup> R.C. 5166.37(A).

<sup>30</sup> Ohio Administrative Code 5160:1-4-05.

<sup>31</sup> R.C. 5163.01, 5163.07, and 5166.01.

<sup>32</sup> R.C. 5163.51.

- Designating ODM as a qualified health entity for the purpose of making presumptive eligibility determinations;
- Accepting self-attestation of income or receipt of other health insurance coverage;
- Requesting approval from the Centers for Medicare and Medicaid Services (CMS) to not exercise the federal requirements to (1) periodically check available income-related data sources to verify eligibility and (2) comply with the public notice requirements related to proposed changes to the state Medicaid plan.

The bill establishes requirements that ODM must follow if it receives federal funding for the Medicaid Program that is contingent upon a temporary maintenance of effort restriction or otherwise has its ability to disenroll ineligible Medicaid recipients restricted (such as the requirements under the Families First Coronavirus Response Act).<sup>33</sup> First, ODM must continue to conduct eligibility redeterminations for the Medicaid Program and act on those redeterminations to the fullest extent permitted under federal law.<sup>34</sup> Second, within 60 days of the expiration of any restriction or limitation described above, the bill requires ODM to complete an audit that does the following:<sup>35</sup>

- Completes and acts on all eligibility redeterminations for Medicaid recipients for whom an eligibility redetermination has not been conducted in the past 12 months;
- Requests approval from CMS to conduct and act on eligibility redeterminations for all Medicaid recipients who were enrolled for a period of at least three months during a period of restriction or limitation. If approved by CMS, ODM must conduct and act on any redetermination within 60 days of receiving approval;
- Carries out an additional check of all information available to ODM under the data matching agreements entered into between ODM and other state agencies (see “**Medicaid data matching agreements**” below) to verify the eligibility of all Medicaid recipients.

The bill requires ODM to submit a report to the Speaker and the President summarizing the results of this audit.<sup>36</sup>

### **Medicaid data matching agreements**

The bill requires the Medicaid Director to enter into three separate data matching agreements. The first, with the Director of the State Lottery Commission and the Executive Director of the Ohio Casino Control Commission, requires that the State Lottery Commission and the Ohio Casino Control Commission provide the Medicaid Director with a searchable list of

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<sup>33</sup> Section 6008, Pub. L. No. 116-127.

<sup>34</sup> R.C. 5163.52(A).

<sup>35</sup> R.C. 5163.52(B)(1), (2), and (3).

<sup>36</sup> R.C. 5163.52(B)(4).

all individuals with substantial lottery or gambling winnings. The Medicaid Director is required to check this list at least monthly to determine if the information affects any Medicaid recipient's eligibility.<sup>37</sup>

The Medicaid Director also must enter into a data matching agreement with the Director of Health. Under this agreement, the Director of Health must provide the Medicaid Director with a searchable list of vital statistics records, including death records. The Medicaid Director must check this list at least monthly to determine whether any of the vital statistics records affect a Medicaid recipient's eligibility.<sup>38</sup>

Finally, the bill requires the Medicaid Director to enter into a data matching agreement with the ODJFS Director. The ODJFS Director must provide the Medicaid Director with a list of Medicaid recipients with an indication of a change in circumstances that may affect a Medicaid recipient's eligibility. This includes information on a quarterly basis about a Medicaid recipient's change in employment or wages, and, on a monthly basis, information about potential changes in residency of a Medicaid recipient.<sup>39</sup>

### **Medicaid waiver**

The bill requires the Medicaid Director to establish a new Medicaid waiver component. Under this component, ODM (or another agency that determines Medicaid eligibility) is permitted to independently verify a recipient's eligibility before accepting an eligibility determination that is made by a health benefit exchange established by Ohio or the U.S. Secretary of Health and Human Services, notwithstanding the current federal law requirements.<sup>40</sup>

The waiver component prohibits adults that are part of Group VIII or who are eligible for Medicaid as part of the covered families and children group (such as parents and caretaker relatives and pregnant women) from being eligible for Medicaid or re-enrolling in the Medicaid Program for six months if they fail to report any change in circumstances that affects the recipient's eligibility for Medicaid.<sup>41</sup>

Additionally, the waiver component specifies all of the following:<sup>42</sup>

- It prohibits ODM from exercising a federal requirement under which hospitals may determine if an individual is eligible for Medicaid during a presumptive eligibility period;<sup>43</sup>

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<sup>37</sup> R.C. 5163.50(A)(1).

<sup>38</sup> R.C. 5163.50(A)(2).

<sup>39</sup> R.C. 5163.50(A)(3).

<sup>40</sup> R.C. 5166.45(A)(1); 42 U.S.C. 1396w-3(b)(1)(B).

<sup>41</sup> R.C. 5166.45(A)(2).

<sup>42</sup> R.C. 5166.45(A)(3), (4), and (5).

- It requires ODM to determine a recipient’s eligibility every six months rather than every twelve months, as required under federal law;<sup>44</sup>
- It prohibits ODM from redetermining a recipient’s eligibility for Medicaid based on information already available to it without also requiring a recipient to provide information regarding the recipient’s eligibility, as required under federal law;
- It prohibits ODM from providing a recipient with a prepopulated renewal form used to redetermine a recipient’s eligibility.

The bill requires ODM to submit the waiver request to CMS by April 1, 2022.<sup>45</sup> ODM must report to the Speaker, President, and the members of the Joint Medicaid Oversight Committee following the approval of the waiver.<sup>46</sup>

## **Unemployment compensation**

### **Additional eligibility screening**

#### **Background – application process**

The bill requires the ODJFS Director to check specific sources of data when determining an individual’s eligibility for unemployment benefits. Determining eligibility is a two-phase process. In the first phase, an individual files an initial application for a determination of benefit rights, which generally examines whether the individual worked and earned enough to be eligible for benefits (“monetary eligibility”). On receiving the initial application, the ODJFS Director may request additional information from the individual and any employers identified in the application. The ODJFS Director determines whether an initial application is valid using the gathered information and any other available sources. This application is used to establish the individual’s benefit year, which is the 52-week period during which the individual may file claims for benefits based on satisfying the monetary eligibility requirements.

After filing a valid initial application and establishing a benefit year, an individual enters the second phase of the process. In the second phase, the individual must file a claim for benefits each week the individual seeks benefits during the individual’s benefit year. The initial weekly claim is referred to as a “first claim.” If the individual is re-employed during a benefit year, but then separates from re-employment before the benefit year ends, the first claim the individual files after the separation is referred to as an “additional claim.”<sup>47</sup>

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<sup>43</sup> 42 U.S.C. 1396a(a)(47)(B) and 42 C.F.R. 435.1110.

<sup>44</sup> 42 C.F.R. 435.916(a).

<sup>45</sup> Section 3.

<sup>46</sup> R.C. 5166.45(B).

<sup>47</sup> R.C. 4141.01 and 4141.28, not in the bill.

## **New hire databases**

The bill adds a requirement that the ODJFS Director must check all of the following sources, in addition to checking other sources under current law, when determining whether an initial application is valid or whether a first claim or additional claim for benefits qualifies an individual for benefits:

- The Ohio New Hire Reporting Center maintained by ODJFS;
- The National Directory of New Hires maintained by the federal Office of Child Support Enforcement;
- The Integrity Data Hub maintained by the National Association of State Workforce Agencies (NASWA) or a similar database maintained by a successor organization.<sup>48</sup>

The Ohio New Hire Reporting Center and the National Directory of New Hires are part of a reporting system created by the federal “Personal Responsibility and Work Opportunity Reconciliation Act of 1996” and state law implementing that Act.<sup>49</sup> Under the system, Ohio employers report their new hires and rehires to the state directory within 20 days after an individual is hired or the employer engages or re-engages a contractor.<sup>50</sup> The Ohio Child Support office matches the reports against open child support cases to locate parents, establish medical, paternity and child support orders, and enforce existing orders. Once the state matches are complete, the new hire information is sent to the National Directory of New Hires and is utilized by child support agencies nationwide.<sup>51</sup>

NASWA is a national organization representing workforce agencies from all 50 states, Washington D.C., and several U.S. territories. The NASWA Integrity Data Hub provides information on the prevention, detection, and recovery of improper unemployment benefit payments, fraud, and delinquent employer contribution.<sup>52</sup>

Currently, the ODJFS Director may use all of these sources for information when making eligibility determinations but is not required to do so.<sup>53</sup>

## **Data matching with Department of Rehabilitation and Correction**

Additionally, the bill requires the ODJFS Director to enter a data matching agreement with the Department of Rehabilitation and Correction. Under the agreement, the DRC Director must provide the ODJFS Director with a searchable list, updated weekly, identifying all

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<sup>48</sup> R.C. 4141.286.

<sup>49</sup> Pub. L. No. 104-193, 42 U.S.C. 653, and R.C. 3121.89 through 3121.89111, not in the bill.

<sup>50</sup> R.C. 3121.893, not in the bill.

<sup>51</sup> ODJFS, *New Hire Reporting: State and Federal Requirements & FAQs*, available [here](#).

<sup>52</sup> NASWA, *Integrity Home*, available [here](#).

<sup>53</sup> R.C. 3121.898, not in the bill; see also 42 U.S.C. 653 and Unemployment insurance Program Letter 03-20, available [here](#).

individuals committed to DRC institutions. DRC must share its records with the ODJFS Director to the extent necessary to effectuate the agreement. The ODJFS Director must check the list when determining the validity of an initial application, a first claim, or an additional claim.<sup>54</sup>

Under continuing law, an individual, among other requirements, must be available for suitable work to receive unemployment benefits. Although an individual in DRC custody may not be available for suitable work, the availability determination depends on the facts and circumstances of each case.<sup>55</sup>

### **Overpayment policy**

Under the bill, the ODJFS Director must develop a written policy regarding the recovery of unemployment benefit overpayments. In the policy, the Director must do all of the following:

- Prioritize the recovery of benefit overpayments that resulted from fraudulent misrepresentation;
- Require the recovery of benefit overpayments to the fullest extent permitted under state and federal law, regardless of whether the overpayment resulted from fraud or reasons other than fraud;
- Require a record to be made any time a benefit overpayment is not recovered because of an exception to recovery in state or federal law;
- Require ODJFS to cooperate with the U.S. Department of Labor (the agency that administers federal unemployment law) to the greatest extent possible with respect to detecting, preventing, and recovering overpayments resulting from fraud, including participating in all available voluntary programs and agreements intended to reduce benefit fraud.<sup>56</sup>

Continuing law requires the ODJFS Director to order the repayment of all benefit overpayments. In the case of overpayments caused by fraud, the Director must also do both of the following:

- During the six-year period following the fraud, deny two otherwise valid weekly claims for benefits for each week of benefits that resulted from fraud (referred to as “penalty weeks”);
- Assess a mandatory penalty against the individual in an amount equal to 25% of the total amount of fraudulent benefits.

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<sup>54</sup> R.C. 4141.287 and 5120.212.

<sup>55</sup> R.C. 4141.29, not in the bill; and see, e.g., *Hageman v. Administrator, Ohio Bureau of Employment Services*, 1991 Ohio App. Lexis 1576, 1991 WL 53835 (6th Cir. 1991).

<sup>56</sup> R.C. 4141.351.

The statute of limitations on actions to collect benefit overpayments obtained through fraud or an associated penalty is six years. The statute of limitations on an action to collect nonfraudulent benefits is three years.<sup>57</sup>

### **Eligibility and overpayment report**

Annually beginning one year after the bill's effective date the ODJFS Director must prepare a report and submit it to the Speaker of the House, the Senate President, and the members of the standing committees of the Senate and House to which legislation pertaining to unemployment compensation is customarily referred. The report must include all of the following information with respect to the year covered by the report:

- The rate of consistency in performing the checks described under “**Additional eligibility screening**,” above;
- The types and amounts of improper benefit payments detected after they were made;
- The types and amount of improper benefit payments prevented before they could be made;
- The total amount of money saved by recovering and preventing improper benefit payments;
- The efficacy of the unemployment fraud detection and prevention measures taken by the ODJFS Director;
- The number and amounts of overpayments that could not be recovered under state or federal law and the reason in state or federal law prohibiting the recovery.<sup>58</sup>

### **Delayed effective date**

The bill specifies that its provisions do not take effect until January 1, 2022. The portions of the bill that require an amendment to the state's Medicaid plan, or a waiver from CMS, may not be implemented until January 1, 2022, or until the state plan amendment or waiver is approved by CMS, whichever is later.<sup>59</sup>

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## **COMMENT**

In April 2018, the Medicaid Director applied to the federal government for the Medicaid waiver needed to implement the work and education requirement for the expansion eligibility group. That waiver was approved in March 2019. If this bill is enacted, the Medicaid Director would have to amend the waiver to incorporate the changes the bill makes to the work and

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<sup>57</sup> R.C. 4141.35, not in the bill.

<sup>58</sup> R.C. 4141.60.

<sup>59</sup> Section 4.

education requirement. The Medicaid Director has the authority under continuing law to submit the amendments to the federal government.<sup>60</sup>

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## HISTORY

Action	Date
Introduced	01-26-21

S0017-I-134/ec

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<sup>60</sup> R.C. 5162.07, not in the bill.