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OHIO LEGISLATIVE SERVICE COMMISSION

Office of Research
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Office

H.B. 169
134th General Assembly

Final Analysis

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Version: As Passed by the General Assembly

Primary Sponsors: Reps. Cutrona and Swearingen

Effective date: December 23, 2021; sections related to commercial driver's license training effective March 24, 2022; one item vetoed

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SUMMARY

COVID-19 recovery appropriations

- Makes appropriations to support recovery from the COVID-19 pandemic.

Medicaid provider relief and workforce incentive payments

- Appropriates a portion of the enhanced Federal Medical Assistance Percentage under the federal "Families First Coronavirus Response Act" to the Department of Medicaid for health care provider relief payments for nursing facilities, assisted living facilities, hospice care programs, and certain hospitals.
- Appropriates a portion of those funds to the Department of Developmental Disabilities to be used for Medicaid payments during FY 2022, including payments to intermediate care facilities for individuals with intellectual disabilities (ICFs/IID) exclusively for workforce incentive payments.
- Permits the Medicaid Director to make provider relief payments to certain home and community-based service providers, assisted living facilities, hospice care programs, and hospitals.
- Permits the Director to make workforce incentive payments to nursing facilities; nonstate ICFs/IID; and critical access, rural, or distressed hospitals.

Suspension of Step Up to Quality requirement (VETOED)

- Would have suspended through December 31, 2022, the requirement that licensed child care centers, homes, and programs be rated in the Step Up to Quality Program to be eligible to provide publicly funded child care (VETOED).

Commercial driver's license training

- Requires an applicant to complete new federal mandatory training requirements before taking the skills test or knowledge test related to an initial application for certain commercial driver's licenses (CDLs) or endorsements.
- Requires the Registrar of Motor Vehicles to verify that an applicant has completed the required training before the applicant takes the skills test or knowledge test and before issuing the applicant the CDL or endorsement.
- Authorizes the Registrar to use the Trainer Provider Registry, available through the Federal Motor Carrier Safety Administration, to verify completion of the required training.
- Requires all authorized driver training schools that teach CDL students to incorporate the new federal training requirements.
- Clarifies that the Registrar must determine both of the following prior to issuing, renewing, transferring, or upgrading a CDL:
 - Whether the applicant was previously issued a CDL in another state; and
 - Whether the applicant is disqualified from operating a commercial motor vehicle.

DETAILED ANALYSIS

COVID-19 recovery appropriations

The act appropriates funds for FY 2022, as provided below. For details on earmarks and other appropriation details, please consult the Legislative Budget Office's [fiscal note](#) for H.B. 169.

H.B. 169 appropriations			
Agency	Amount	Line item	Act section
Department of Developmental Disabilities	\$142,000,000	Medicaid Services	207.10
Department of Education	\$33,803,196	Governor Emergency Education Relief – EDU	209.10
Department of Education	\$155,190,488	Emergency Assistance to Non-Public Schools	209.10
Department of Education	\$2,288,901,788	Federal Coronavirus School Relief	209.10
Department of Education	\$7,327,165	ARP – Homeless Children and Youth	209.10
Department of Health	\$32,000,000	ARPA – Crisis Response Workforce	211.10

H.B. 169 appropriations			
Agency	Amount	Line item	Act section
Department of Health	\$8,476,274	Public Health Emergency Response	211.10
Department of Health	\$12,643,140	ARPA – Disease Intervention Workforce	211.10
Department of Health	\$10,958,150	ELC Nursing Home & Long-Term Care Strike Teams	211.10
Department of Health	\$5,676,540	ELC Strengthening HAI/AR Grant	211.10
Department of Health	\$13,090,000	Detect and Mitigate COVID-19 – Confinement Facilities	211.10
Department of Health	\$8,268,032	SHIP – Testing and Mitigation Grant	211.10
Department of Job and Family Services	\$28,000,000	Child Care Federal	213.10
Department of Job and Family Services	\$639,000,000	Child Care ARPA Supplement	213.10
Department of Job and Family Services	\$20,000,000	Federal Unemployment Programs	213.10
Department of Public Safety	\$250,000,000	Community Violence Intervention – First Responder Program	217.10
Department of Higher Education	\$4,000,000	GEER – Higher Education Initiatives	218.10
Department of Medicaid	\$158,700,000	MCD Home and Community Based Services	220.10
Department of Medicaid	\$370,300,000	MCD Home and Community Based Services – Federal	220.10

Additional appropriations

The act appropriates for FY 2022 the unexpended and unencumbered amounts in the State Coronavirus Relief Fund (CRF) to the COVID Response Costs – Multiple Agencies line item.

The Director of Budget and Management may transfer the appropriations to new or existing items within the CRF but must report any transfers to the Controlling Board by June 30, 2022.¹

Fund rollovers – FY 2022 to FY 2023

The act permits certain agencies to rollover unexpended, unencumbered balances in the following funds from FY 2022 to FY 2023:

- Department of Mental Health and Addiction Services, the Mental Health Block Grant funds and Substance Abuse Block Grant funds;²
- Department of Education, ARP – Homeless Children and Youth Fund;³
- Department of Education, ARP – Students with Disabilities Fund;⁴
- All of the appropriations to funds in the table [above](#).⁵

School special revenue funds deficits

Under the act, school districts, community schools, and STEM schools are permitted to have a deficit in the special revenue fund established to receive certain COVID-19 relief funds in FYs 2021 and 2022 if the deficit results from a temporary delay in the Department of Education’s ability to process reimbursement claims.⁶

Personal protective equipment

The act requires that a recipient of the act’s funds (or a future appropriation of federal coronavirus funds) for the purchase of personal protective equipment must purchase only products that are:⁷

- Approved by the National Institute for Occupational Safety and Health; or
- Authorized for use by the U.S. Food and Drug Administration, including under emergency use authorization.

¹ Section 221.10.

² Section 223.10.

³ Section 209.40.

⁴ Section 209.50.

⁵ Section 233.10.

⁶ Section 209.60.

⁷ Section 234.10.

Medicaid provider relief and workforce incentive payments

Enhanced FMAP dollars

The act appropriates certain federal COVID-19 funds under the “Families First Coronavirus Response Act” (FFCRA) and requires the Department of Medicaid to use a portion of those funds for health care provider relief payments. The federal share of Medicaid spending is referred to as the Federal Medical Assistance Percentage (FMAP) and is based on a state’s per capita income. Effective January 1, 2020, the FFCRA provided a temporary 6.2% increase to each qualifying state’s FMAP. States must meet certain requirements to qualify for the enhanced FMAP.⁸

The act requires that a portion of those dollars be used for provider relief payments to the following:

- Nursing facilities;
- Residential care facilities (“assisted living facilities”);
- Hospice care programs; and
- Critical access, rural, or distressed hospitals, as determined by the Medicaid Director.⁹

Related to the components of the Medicaid program administered by the Department of Developmental Disabilities, the act appropriates some of the increased FMAP funds for that Department and permits it to use the funds to pay for Medicaid services in FY 2022. The Department must pay a portion of those funds to nonstate intermediate care facilities for individuals with intellectual disabilities (ICFs/IID) exclusively for workforce incentive payments, as described below (see “[Workforce incentive payments](#)”).¹⁰

Provider relief payments

The act permits the Medicaid Director to make relief payments to the following Medicaid home and community-based services providers, as authorized under the “American Rescue Plan Act of 2021”:

- Developmental disabilities providers;
- Long-term services and supports providers;
- Behavioral health services providers; and
- Home and community-based services-related providers.

⁸ Public Law 116-127.

⁹ Section 220.40.

¹⁰ Sections 207.20 and 207.30.

The act also permits the Director to make provider relief payments to the following Medicaid providers:

- Critical access, rural, and distressed hospitals, as determined by the Director;
- Assisted living facilities; and
- Hospice care programs.¹¹

Workforce incentive payments

Additionally, the act permits the Director to make workforce incentive payments to the following facilities that are Medicaid providers and in good standing with the Department of Medicaid:

1. Nursing facilities;
2. Nonstate ICFs/IID; and
3. Hospitals that are general, acute-care facilities certified by the Department as critical access, rural, or distressed hospitals.

A facility or hospital must use the payments exclusively for direct care staff compensation, including staff retention bonuses, overtime pay and shift differential payments, staff recruitment costs, and new hire incentive payments. The Medicaid Director may recover any funds that are used for any other purpose, and any nursing facility that receives funds and sells any of its business or bed licenses on or before June 30, 2023, must reimburse those funds to the state from the proceeds of the sale. The act prohibits any of the workforce incentive payments from going to any of the following:

- Contract workers;
- Staff from a staffing agency;
- Administrators;
- Executive staff; or
- Owners.¹²

Suspension of Step Up to Quality requirement (VETOED)

The Governor vetoed a provision that would have suspended, through December 31, 2022, the requirement that child day-care centers, family day-care homes, and licensed preschools and school child programs be rated in the Department of Job and Family Services' Step Up to Quality Program to be eligible to provide publicly funded child care.¹³

¹¹ Section 220.50.

¹² Sections 220.60 to 220.80.

¹³ Section 751.10. See also R.C. 5104.31(C)(1), not in the act.

Commercial driver's license (CDL) changes

CDL training

Background

The Moving Ahead for Progress in the 21st Century Act (MAP-21) in 2012 required the Federal Motor Carrier Safety Administration (FMCSA) to update its rules regarding entry-level driver training for commercial driver's license (CDL) applicants. It also required the FMCSA to create a registry to record which CDL applicants have completed the new training and certification process. After extensive committee meetings and interested party input, the new federal rules pertaining to entry-level driver training and the Training Provider Registry will take effect February 7, 2022. See the [FMCSA website](#) for further information about the training and new registry.

State training and license

The act updates state law to reflect the new federal regulations. The new training requirements apply only to new, initial applicants for the CDL or endorsements. They do not apply to anyone who already holds the license or endorsement. Specifically, an applicant for a CDL must successfully complete the training required by federal law before doing any of the following:

1. Taking the skills test required for the initial issuance of a Class A or Class B CDL;
2. Taking the skills test required for the initial issuance of a Passenger (P) or School Bus (B) endorsement on the applicant's CDL; or
3. Taking the knowledge test required for the initial issuance of a Hazardous Materials (H) endorsement on the applicant's CDL.

The Registrar of Motor Vehicles must electronically verify that an applicant has completed the required training through the new FMCSA Training Provider Registry both prior to the applicant taking the requisite skills or knowledge test and prior to issuing the license or endorsement. The Registrar may not issue the license or endorsement if the applicant did not successfully complete the training.¹⁴

Driver training schools

The act authorizes both state driver training schools and authorized driver training providers listed in the Registry to provide the federal CDL training.¹⁵ Additionally, each state-licensed driver training school that provides CDL education courses training drivers in the operation of commercial trucks, commercial cars, buses, and commercial tractors, trailers, and semitrailers must update its courses to comply with the federal requirements.¹⁶

¹⁴ R.C. 4506.09(F)(1) and 4506.13(B)(1) and (2)(d).

¹⁵ R.C. 4506.09(F)(2).

¹⁶ R.C. 4508.031.

Precheck prior to CDL issuance

The act clarifies that the Registrar must determine both of the following prior to issuing, renewing, transferring, or upgrading a CDL:

1. Whether the applicant was previously issued a CDL in another state; and
2. Whether the applicant is disqualified from operating a commercial motor vehicle.¹⁷

HISTORY

Action	Date
Introduced	03-02-21
Re-referred to H. Rules and Reference	03-24-21
Reported, H. Finance	04-15-21
Passed House (91-0)	04-15-21
Reported, S. Finance	12-08-21
Passed Senate (32-1)	12-08-21
House concurred in Senate amendments (87-6)	12-09-21

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¹⁷ R.C. 4506.13(B)(1).