

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas
93rd General Assembly
Regular Session, 2021

As Engrossed: S3/15/21 S3/17/21
A Bill

SENATE BILL 295

By: Senator Flippo
By: Representative Lundstrum

For An Act To Be Entitled

AN ACT TO PROMOTE INTEGRITY IN WELFARE PROGRAMS; TO
AMEND THE MEDICAID ELIGIBILITY VERIFICATION SYSTEM;
AND FOR OTHER PURPOSES.

Subtitle

TO PROMOTE INTEGRITY IN WELFARE PROGRAMS;
AND TO AMEND THE MEDICAID ELIGIBILITY
VERIFICATION SYSTEM.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. DO NOT CODIFY. Legislative findings.

The General Assembly finds that:

(1) The State of Arkansas has lost millions of dollars to waste and fraud in its welfare programs;

(2) Inadequate eligibility verification policies have failed to maintain program integrity; and

(3) As demand for public assistance remains high due to economic uncertainties and closures related to the coronavirus 2019 (COVID-19) pandemic, protecting limited resources for the needy is critical.

SECTION 2. Arkansas Code Title 20, Chapter 76, Subchapter 2, is amended to add an additional section to read as follows:

20-76-215. Program integrity in Supplemental Nutrition Assistance Program.

(a) Except when prohibited by federal law, the Department of Human



Services shall adopt the following procedures to verify eligibility for participation in the Supplemental Nutrition Assistance Program or for receipt of Supplemental Nutrition Assistance Program benefits:

(1) All conditions of eligibility for assistance shall be verified before authorization of assistance and during a recertification of a recipient's eligibility; and

(2)(A) Except when prohibited by federal law, it is a condition of eligibility for assistance that an applicant or recipient consents to the disclosure of information about the age, residence, citizenship, employment, application for employment, income, and resources of the applicant or recipient that are in the possession of a third party.

(B) The consent of the applicant or recipient is effective to empower any third party to release information requested by the Department of Human Services.

(b)(1)(A) The Department of Human Services shall enter into a data matching agreement with the Office of the Arkansas Lottery, Arkansas Racing Commission, and all other commissions and agencies with relevant information to identify individuals with lottery or gambling winnings.

(B) Data received under a data matching agreement described in subdivision (b)(1)(A) of this section shall be treated as verified upon receipt.

(2)(A) On at least a monthly basis, the Department of Human Services shall review the information described in subdivision (b)(1) of this section and deny or revoke assistance for the entire household upon verification of any substantial winnings exceeding the resource limits for that household or the threshold set under 7 C.F.R. 272.17, as existing on January 1, 2021.

(B) If the Department of Human Services discovers, including through a database match, that a household fails to disclose substantial winnings that would result in being ineligible for the Supplemental Nutrition Assistance Program, the household shall be referred to the Office of Appeals and Hearings of the Department of Human Services to determine whether an intentional program violation has occurred through a due process hearing.

(c) The Department of Human Services shall review information:

(1) From the Department of Health concerning individuals

enrolled in assistance that indicates a change in circumstances, including without limitation death certificates, that may affect eligibility, on at least a monthly basis;

(2) From the Division of Workforce Services, the Department of Finance and Administration, the United States Department of Health and Human Services, the Office of Child Support Enforcement, and the National Directory of New Hires concerning individuals enrolled in assistance that indicates a change in circumstances that may affect eligibility, including without limitation a change in employment or wages, on at least a quarterly basis;

(3) From the Division of Workforce Services concerning individuals enrolled in assistance that indicates a change in circumstances that may affect eligibility, including without limitation a change in employment or wages;

(4) Concerning individuals enrolled in assistance that indicates a change in circumstances that may affect eligibility, including without limitation potential changes in residency as identified by out-of-state electronic benefit transfer transactions, on at least a monthly basis; and

(5) From the Department of Corrections and the Division of Correction concerning individuals enrolled in assistance that indicates a change in circumstances that may affect eligibility.

(d) On at least an annual basis, the Department of Human Services shall make available to the public on its website data, including without limitation information regarding noncompliance and fraud investigations in assistance for the following aggregate and nonconfidential and nonpersonally identifying information:

(1) The number of assistance cases investigated for intentional program violations or fraud;

(2) The total number of assistance cases referred for prosecution;

(3) Improper payments and expenditures;

(4) Monies recovered;

(5) Aggregate data concerning improper payments and ineligible recipients as a percentage of those investigated and reviewed; and

(6) Aggregate amount of funds expended by electronic benefits transfer card transactions in each state outside of Arkansas.

(e) If the Department of Human Services receives information

concerning an individual or household enrolled in assistance that indicates a change in circumstances that may affect eligibility, the Department of Human Services shall review the individual's or household's case.

(f) The Department of Human Services may execute a memorandum of understanding with any other state department, agency, or division for information required to be shared between agencies under this section.

(g)(1) Notwithstanding other provisions of law, a household receiving assistance shall be subject to change reporting and report changes in circumstances, established by 7 C.F.R. § 273.12(a)(1), as it existed on January 1, 2021, within ten (10) days of the date the change becomes known to the household unless the household is designated as a simplified reporting household.

(2)(A) A household that is designated as a simplified reporting household shall be assigned a certification period of six (6) months or less.

(B) The Department of Human Services shall begin phasing in the reduction in certification periods for simplified reporting households no later than September 1, 2022.

SECTION 3. Arkansas Code § 20-77-2102 is amended to read as follows:
20-77-2102. Medicaid Eligibility Verification System – Definitions.

(a) The Department of Human Services shall establish and maintain the Medicaid Eligibility Verification System that is designed to prevent fraud in the establishment and maintenance of Medicaid eligibility.

(b)(1) In establishing the Medicaid Eligibility Verification System, the department ~~shall have the flexibility to determine whether the state shall be an “assessment state” or~~ and not a “determination state” for purposes of Medicaid eligibility determinations by the federally facilitated marketplace.

(2) As used in this subsection:

(A) “Assessment state” means a state with a federally facilitated marketplace that can elect to have the federally facilitated marketplace make assessments of Medicaid eligibility and then transfer the account of an individual to the state Medicaid agency for a final determination; and

(B) “Determination state” means a state that requires the eligibility determination made by the federally facilitated marketplace to be

accepted by the state Medicaid agency.

(c) Notwithstanding other provisions of law, the department shall not accept Medicaid eligibility determinations from an exchange or marketplace established under 42 U.S.C. § 18041(c) before verifying eligibility independently and making a Medicaid eligibility determination.

SECTION 4. Arkansas Code Title 20, Chapter 77, Subchapter 21, is amended to add additional sections to read as follows:

20-77-2104. Medicaid eligibility verification.

(a) Except when prohibited by federal law, the Department of Human Services shall adopt the following procedures to verify Medicaid eligibility for participation in the Arkansas Medicaid Program or receipt of benefits in the Arkansas Medicaid Program:

(1) All conditions of eligibility for Medicaid assistance shall be verified before authorization of Medicaid assistance and during a reevaluation of a recipient's eligibility; and

(2)(A) Except when prohibited by federal law, a condition of eligibility for assistance is that an applicant or recipient consents to the disclosure of information about the age, residence, citizenship, employment, applications for employment, income, and resources of the applicant or recipient that are in the possession of third parties.

(B) The consent described in subdivision (a)(2)(A) of this section shall be effective to empower any third party to release information requested by the Department of Human Services.

(b)(1) The Department of Human Services shall enter into a data matching agreement with the Office of the Arkansas Lottery and the Arkansas Racing Commission to identify individuals with substantial winnings.

(2) On at least a quarterly basis, the Department of Human Services shall review this information and act on any changes that may affect eligibility consistent with 42 U.S.C. 1396, as existing on January 1, 2021.

(c) The Department of Human Services shall review information:

(1) From the Department of Health concerning individuals enrolled in Medicaid assistance that indicates a change in circumstances, including without limitation death certificates, that may affect eligibility, on at least a monthly basis;

(2) From the Division of Workforce Services and the Department

of Finance and Administration concerning individuals enrolled in assistance that indicates a change in circumstances that may affect eligibility, including without limitation a change in employment or wages, on at least a quarterly basis;

(3) Concerning individuals enrolled in assistance that indicates a change in circumstances that may affect eligibility, including without limitation potential changes in residency as identified by out-of-state electronic benefit transfer transactions, on at least a monthly basis; and

(4) From the Department of Corrections and the Division of Correction concerning individuals enrolled in Medicaid assistance that indicates a change in circumstances that may affect eligibility.

(d) Annually, the Department of Human Services shall make available to the public on its website data, including without limitation information regarding noncompliance and fraud investigations in assistance for the following aggregate and nonconfidential and nonpersonally identifying information:

(1) The number of assistance cases investigated for intentional Arkansas Medicaid Program violations or fraud;

(2) The total number of assistance cases referred for prosecution;

(3) Improper payments and expenditures;

(4) Monies recovered; and

(5) Aggregate data concerning improper payments and ineligible recipients as a percentage of those investigated and reviewed.

(e) If the Department of Human Services receives information concerning an individual enrolled in Medicaid assistance that indicates a change in circumstances that may affect eligibility, the Department of Human Services shall review the individual's or household's case.

(f) The Department of Human Services may execute a memorandum of understanding with any other state department, agency, or division for information required to be shared between agencies under this section.

20-77-2105. Additional program integrity measures.

(a) Unless required under federal law, the Department of Human Services shall not:

(1) Designate itself as a qualified health entity for the

purpose of making presumptive eligibility determinations or for any purpose not expressly authorized by state law;

(2) Accept self-attestation of income, residency, age, household composition, caretaker or relative status, or receipt of other coverage without verification before enrollment; or

(3) Request authority to waive or decline to periodically check any available income-related data sources to verify eligibility.

(b) When the department receives funding for Medicaid contingent on temporary maintenance of effort restrictions or, for any reason, is limited in the department's ability to unenroll individuals, such as restrictions imposed by Section 6008 of the Families First Coronavirus Response Act, Pub. L. No. 116-127, the department shall:

(1) Within one hundred eighty (180) days of the expiration of the restrictions, complete a full audit in which the department shall:

(A) Complete and act on eligibility reevaluations for all cases that have not had a reevaluation within the last twelve (12) months;

(B) Carry out an additional check of all verification measures required in this subchapter to verify eligibility and act on the information checked; and

(C) Submit a summary report of the audit to the President Pro Tempore of the Senate and Speaker of the House of Representatives; and

(2) Continue to conduct reevaluations as in the normal course of business and act on such reevaluations to the fullest extent permissible under the law.

SECTION 5. Arkansas Code Title 23, Chapter 115, Subchapter 1, is amended to add an additional section to read as follows:

23-115-105. Data sharing with Department of Human Services.

The Office of the Arkansas Lottery and the Arkansas Racing Commission shall enter into a data matching agreement with the Department of Human Services for purposes under §§ 20-76-215 and 20-77-2104.

SECTION 6. Arkansas Code § 26-18-303(b), concerning confidential and privileged records and exceptions, is amended to add an additional subdivision to read as follows:

(26) Disclosure to the Department of Human Services as required

by § 20-76-215(c) or § 20-77-2104(c) to determine whether a change in circumstances has occurred that would affect the eligibility of an applicant for benefits under the Supplemental Nutrition Assistance Program or the Arkansas Medicaid Program.

/s/Flippo