



Final Analysis

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Legislative Service Commission

Am. Sub. H.B. 40*
125th General Assembly
(As Passed by the General Assembly)

Reps. Calvert (By Request), D. Evans, Hoops

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ACT SUMMARY

- Provides that direct payment permit holders and vendors that are required to pay sales taxes by electronic funds transfer, and sellers and consumers that must pay use taxes in the same manner, are required to pay those taxes on or before four specified dates each month.
- Allows the Tax Commissioner to impose a charge for failure to make a payment under this accelerated schedule.
- Increases the sales tax vendor discount from 0.75% to 1.1% for returns filed during the period from May 1, 2003, to June 30, 2003.
- Permits the Director of Job and Family Services (ODJFS) to prescribe the amount, duration, and scope of publicly funded child day-care benefits in rules establishing eligibility criteria.
- Provides that, when anticipated future expenditures will exceed available funds, the Director of ODJFS may disenroll existing participants with income above a specified percentage of the federal poverty line and may limit enrollment of new participants to those with incomes at or below a specified percentage of the federal poverty line.

* *This analysis does not address appropriations, fund transfers, and similar provisions. See the Legislative Service Commission's Fiscal Note for H.B. 40 for an analysis of such provisions.*

- No longer exempts a caretaker parent whose children are eligible for special needs day-care from the requirement that the parent be employed or participating in an education or training program.
- Requires that changes in employment or participation in an education or training program be reported by a caretaker parent not later than ten calendar days after the change occurs.
- Requires the Director of ODJFS to adopt rules establishing reimbursement ceilings for publicly funded child day-care, rather than rules establishing reimbursement rates.
- Requires that a provider be paid at the lowest of the provider's customary charge, the reimbursement ceiling set by rules, or a rate the county department of job and family services negotiates with the provider.
- Eliminates the requirement that a provider of day-care to children of caretaker parents who work nontraditional hours be paid at the reimbursement rate set by rule regardless of whether that rate is higher than the provider's customary charge.
- Eliminates the authority of a county department of job and family services to request a waiver of the reimbursement ceiling when a family has special circumstances or there are unique market conditions.
- Requires the Director of ODJFS to set the reimbursement ceiling for a type B family day-care home provider that has limited certification and provides day-care to children of the same caretaker parent at 60% of the ceiling for fully certified type B family day-care homes.
- Specifies that it is the intention of the General Assembly that, acknowledging the act's changes to the publicly funded child day-care law, ODJFS take appropriate steps to provide day-care to as many children as possible.
- Specifies that any information received or created by ODJFS pursuant to negotiation of a drug rebate agreement or supplemental drug rebate agreement under the Medicaid program or the Disability Medical Assistance Program is confidential and is not a public record.

- Eliminates the requirement that school districts spend their parity aid payments on any specific activities and that the payments be aimed at strategies included in their improvement plans.
- Permits the Department of Youth Services to adjust the amounts allocated for the care and custody of felony delinquents, if the Department's appropriation for a fiscal year is subsequently revised by law or the Governor orders it to reduce its expenditures.

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CONTENT AND OPERATION

Accelerate sales and use tax payments

(R.C. 5739.031, 5739.032, 5739.12, 5739.122, 5739.21, 5741.03, 5741.12, and 5741.121; Sections 3, 4, and 5)

Under continuing law, a direct payment permit holder, vendor, seller, or consumer pays sales and use taxes by electronic funds transfer (EFT) if the total amount of tax required to be paid by it in 2000 or thereafter equaled or exceeded \$60,000. The act provides that direct payment permit holders and vendors that pay sales taxes by EFT, and sellers and consumers that pay use taxes in the same manner, must make their sales or use tax payments four times a month, according to the following schedule:

Entity paying sales or use tax by EFT	Required monthly payment dates	Amounts to be paid on or before the date
Direct payment permit holders and consumers	11th, 18th, and 25th 23rd	Pay ¼ of total tax liability for the same month in the <i>preceding</i> calendar year. Pay taxes due for the previous month minus amounts already paid for that month.
Vendors and sellers	11th 18th 25th In lieu of this method, may remit taxes in same manner as direct payment permit holders. 23rd	Pay taxes collected during the first 7 days of the month. Pay taxes collected on the 8th through 14th day of the month. Pay taxes collected on the 15th through the 21st day of the month. Pay taxes collected for the previous month minus amounts already paid for that month under either method.

For failure to make a payment as required by this schedule, the act permits the Tax Commissioner to impose an additional charge of up to 5% of the unpaid amount. If taxes are required to be paid by EFT, but are not, the Commissioner may impose a charge not to exceed the lesser of 5% of the amount required to be paid by EFT or \$5,000. Under prior law, the charge equaled 5% of the amount required to be paid by EFT, not to exceed \$5,000.

Since tax payments are accelerated under the above schedule, resulting in some payments being made without tax reports or returns accompanying them, the act provides that the Commissioner may return taxes to the county or transit authority levying them, based on billings and assessments received, or shown on tax returns or reports filed, during the month.

The act further provides that the Commissioner may require a vendor that operates from multiple locations or has multiple vendor's licenses to report all



sales tax liability on one consolidated return. In determining whether the amount of that vendor's total sales tax payment equals or exceeds the \$60,000 threshold for triggering payment by EFT, the act provides that the vendor's total tax liability for the previous calendar year for all of the vendor's locations or licenses is the amount to be used.

Temporary increase in vendor discount

(Section 16)

Under ongoing law modified by the act, a vendor that files its sales tax return on time and pays the correct amount of tax can keep 0.75% of the amount shown due on the return as a discount in consideration for services performed for the state in collecting the tax. The act provides that, for returns filed during the period from May 1, 2003, to June 30, 2003, vendors are entitled to a discount of 1.1% of the amount shown due on the return.

Eligibility for publicly funded child day-care

(R.C. 5104.30, 5104.38, 5104.382, and 5104.39)

Continuing law designates the Department of Job and Family Services (ODJFS) as the state agency responsible for the administration and coordination of federal and state funding for publicly funded child day-care in Ohio. The following categories of persons are to be provided publicly funded child day-care:

(1) Participants in the Ohio Works First Program;¹

(2) An assistance group that ceases to participate in Ohio Works First. This category of publicly funded child day-care is called "transitional child day-care" and is to be provided for a maximum 12-month period during which (a) the assistance group requires day-care due to employment and (b) the assistance group's income does not exceed 150% of the federal poverty guidelines. An assistance group ineligible for Ohio Works First due to receipt of fraudulent assistance or a sanction for failure or refusal to comply in full with a provision of a self-sufficiency contract is not eligible for transitional child day-care.

(3) An individual who would be participating in Ohio Works First if not for a sanction for failure or refusal to comply in full with a provision of a self-sufficiency contract and who continues to participate in a work activity,

¹ *Ohio Works First is the state's cash assistance program for low income children and their caretaker parents.*

developmental activity, or alternative work activity pursuant to an assignment by the county department of job and family services.

(4) A family receiving publicly funded child day-care on October 1, 1997, until the family's income reaches 150% of the federal poverty guidelines.

(5) Subject to available funds, individuals who meet eligibility requirements established by ODJFS rules. The rules must give priority to families with lower incomes and must specify the maximum amount of income a family may have for initial eligibility and continued eligibility, which cannot exceed 200% of the federal poverty guidelines.

Under the act, ODJFS is permitted to prescribe the amount, duration, and scope of benefits available as publicly funded child day-care.

ODJFS is required by continuing law to establish a procedure to monitor county expenditures to ensure that they do not exceed federal and state funds available for publicly funded child day-care. If ODJFS determines that expenditures will exceed funds, it must notify the county departments of job and family services and issue and implement an administrative order that specifies priorities for expending the remaining funds and instructions and procedures to be used by the county departments. Under prior law, the order could suspend new enrollment or limit new enrollment to those with incomes at or below a specified percentage below the federal poverty line. It could not, however, limit enrollment by otherwise narrowing eligibility standards established by statute.

The act does the following:

(1) Retains ODJFS's authority to suspend new enrollment;

(2) Permits ODJFS to limit enrollment of new participants to those with incomes at or below a specified percentage of the federal poverty line (rather than those with incomes at or below a specified percentage *below* the federal poverty line, as in prior law);

(3) Permits ODJFS to disenroll existing participants with income above a specified percentage of the federal poverty line;

(4) Eliminates the restriction that the order not otherwise narrow eligibility standards established by statute.

Special needs day-care no longer exempt from work requirement

(R.C. 5104.01(NN) and 5104.34(A)(2))

Under ongoing law, to be eligible for publicly funded child day-care, the caretaker parent must be employed or participating in a program of education or training. Prior law provided an exemption from this requirement for families whose children were eligible for protective or special needs day-care.² The act eliminates the exemption for families eligible for special needs day-care.

Report of change in employment status

(R.C. 5104.34(C))

Ongoing law requires a caretaker parent receiving publicly funded child day-care to report to the entity that determined eligibility any change in employment status or participation in a program of education or training. The act requires that information to be reported not later than ten calendar days after the change occurs.

Reimbursement for publicly funded child day-care

(R.C. 5104.04, 5104.30, 5104.32, and 5104.35)

Under prior law, the Department of Job and Family Services (ODJFS) was required to adopt rules establishing a procedure for determining "rates of reimbursement" for providers of publicly funded child day-care. Providers were reimbursed at the lower of the rate the provider customarily charged or the reimbursement rate established by ODJFS. If the provider provided day-care to parents who worked nontraditional hours, however, the provider was reimbursed at the ODJFS reimbursement rate even if the rate the provider customarily charged was lower than the reimbursement rate. A county department of job and family services could request a waiver of the maximum reimbursement rate for the purpose of paying a higher rate for day-care based on the special needs of the child, the special circumstances of a family, or unique day-care market conditions.

Under the act, ODJFS is required to adopt rules establishing "reimbursement ceilings," rather than reimbursement rates. Regardless of whether the provider provides care during nontraditional hours, the provider is to be reimbursed at the lowest of (1) the provider's customary charge, (2) the

² "Special needs day-care" was defined as publicly funded child day-care that is provided for a child who is physically or developmentally handicapped, mentally retarded, or mentally ill (R.C. 5104.01(NN)).

reimbursement ceiling established by ODJFS, or (3) a rate the county department negotiates with the provider. The act eliminates a county department's authority to request a waiver of the reimbursement ceiling due to the special circumstances of the family or unique day-care market conditions.

Reimbursement of type B day-care homes with limited certification

(R.C. 5104.30(F)(2)(c))

Ongoing law provides that a type B family day-care home is eligible for reimbursement under the publicly funded child day-care program if the home is certified by the county department of job and family services.³ Eligibility for public funds extends to type B homes with limited certification, which is granted to day-care providers who provide care only for their relatives or only for the children of one parent. Under prior law that established maximum reimbursement rates for publicly funded day-care, type B homes with limited certification were reimbursed at the greater of (1) the rate that was in effect for the home on October 1, 1997, or (2) 75% of the rate paid to homes with full certification. Under the act, type B homes with limited certification that provide care to relatives are to be reimbursed at 75% of the reimbursement ceiling that applies to homes with full certification. Type B homes with limited certification that provide care to children of the same caretaker parent are to be reimbursed at 60% of the reimbursement ceiling that applies to homes with full certification.

General Assembly's intent with respect to child day-care

(Section 15)

The act specifies that it is the intention of the General Assembly that, acknowledging the act's changes to the publicly funded child day-care law, the Department of Job and Family Services take appropriate steps to provide day-care to as many children as possible consistent with the goals of the program and the constraints of the state's fiscal situation.

³ A type B family day-care home may provide child day-care to one to six children at one time if not more than three of the children are under age two.

Confidentiality of drug rebate negotiation information

(R.C. 5101.31)

Background

The federal Omnibus Budget Reconciliation Act of 1990 requires manufacturers of drugs used in state Medicaid programs to enter into national rebate agreements with the U.S. Department of Health and Human Services. In addition, states may negotiate their own rebate agreements, called supplemental rebates, with drug manufacturers. The supplemental rebate to the state is not necessarily received in the form of cash. It can come in the form of other services, such as disease management programs.

Ohio participates in the federal rebate program. Ohio is also in the process of establishing a supplemental rebate program separate from the federal program. Senate Bill 261 of the 124th General Assembly authorized the Department of Job and Family Services (ODJFS) to establish by administrative rule and implement a supplemental drug rebate program. Under the program, drug manufacturers may be required to provide ODJFS a supplemental rebate as a condition of having the manufacturer's products covered by the Medicaid program without prior authorization.⁴ S.B. 261 also states that supplemental rebates may be either of the following: (1) one or more cash payments by a drug manufacturer to ODJFS or (2) one or more services a drug manufacturer performs that are guaranteed to produce savings to the Medicaid program within one year of the date the Director enters into a supplemental drug rebate agreement with the manufacturer or by another date negotiated by the Director and manufacturer. S.B. 261 provides examples of services that drug manufacturers may perform, including disease management, drug product donations, drug utilization control, prescriber and beneficiary counseling and education, and fraud and abuse prevention initiatives. (R.C. 5111.082.)

Confidentiality provisions

Under the act, any information received or created by ODJFS pursuant to negotiation of a drug rebate agreement or a supplemental drug rebate agreement under the Medicaid program or the Disability Medical Assistance Program is confidential and is not a public record.

⁴ *A drug subject to prior authorization is covered by Medicaid only if ODJFS authorizes a pharmacist to dispense it to a particular Medicaid recipient.*

Elimination of spending restrictions on school district parity aid payments

(R.C. 3302.041, repealed)

Background

Parity aid is a state subsidy paid to about 80% of the state's school districts. It is intended to assist in paying for costs above the calculated per pupil base-cost of education and above the calculated cost of providing special education, vocational education, and pupil transportation services. It is generally paid to districts in the 80 lowest-wealth percentiles based on income-adjusted property valuation. The subsidy paid to a district is generally the difference between the amount that 9.5 mills would raise in that district and the amount that 9.5 mills would raise in the 123rd wealthiest district.⁵

All school districts that are rated by the Department of Education as "in need of continuous improvement," "in a state of academic watch," or "in a state of academic emergency," must develop a continuous improvement plan that outlines strategies to improve performance.⁶ Under prior law, these districts also had to apply the full amount of their parity aid payments (if they got them) to one or more statutorily prescribed activities that were directed at implementing their continuous improvement plans. Those prescribed activities were as follows:

- (1) Upgrading or purchasing additional classroom equipment, materials, textbooks, or technology;
- (2) Lowering student/teacher ratios in additional classrooms;
- (3) Providing more advanced curriculum opportunities;
- (4) Providing additional electives or mandatory courses for graduation;

⁵ R.C. 3317.0217, *not in the act*. There is an alternative formula for calculating parity aid payments for districts that experience a combination of lower incomes, higher poverty, and higher business costs than the statewide median of those variables.

⁶ R.C. 3302.04, *not in the act*. The Department is required to rate the academic performance for each school district and school building annually based on indicators established by the Department. Currently, there are 22 indicators. As prescribed in the law, an "excellent" district meets at least 21 indicators, an "effective" district meets at least 17 but less than 21 indicators, a district "in need of continuous improvement" meets at least 11 but less than 17 indicators, an "academic watch" district meets at least 7 but less than 11 indicators, and an "academic emergency" district meets less than 7 indicators. (R.C. 3302.03, *not in the act*.) In 2003, 300 of the 608 districts that were rated attained a rating of excellent or effective.

- (5) Increasing professional development;
- (6) Serving more students in all-day kindergarten;
- (7) Providing preschool to more students;
- (8) Providing additional programming and services for special student populations such as gifted, disadvantaged, or disabled students;
- (9) Establishing new academic intervention programs or increasing the number of students served in existing ones, including programs such as tutoring or summer school.

However, the Superintendent of Public Instruction could authorize a school district to spend parity aid payments for another purpose, upon request of the district, if the Superintendent found that the proposed alternative use either would contribute to accomplishing other goals of the district's plan or was necessary to eliminate a threat to student health or safety.

The act

The act eliminates the requirement that school districts spend their parity aid payments on any specific activities and that the payments be aimed at strategies included in their improvement plans. It does not affect the calculation of or eligibility for parity aid, nor does it affect the requirement that the three types of lower-performing school districts develop improvement plans.

Allocation of appropriations for the care and custody of felony delinquents

(R.C. 5139.41)

Under ongoing law, the Department of Youth Services is required to develop a formula for each year of a biennium for allocating the appropriations made to the Department for the care and custody of felony delinquents. The formula is to be developed in accordance with specified guidelines, including the utilization of a certain amount of the appropriation for the Contingency Program, for operational costs of specified facilities, and for the Felony Delinquent Care and Custody Program.

The act provides that if the Department's appropriation for a fiscal year is subsequently revised by law, or if it is ordered to reduce its expenditures by executive order, the Department may adjust the amounts that have been allocated under the formula in a manner consistent with the revision or reduction.

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	02-05-03	p. 121
Reported, H. Finance & Appropriations	02-11-03	pp. 145-146
Passed House (68-31)	02-12-03	pp. 151-153
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Passed Senate (18-15)	02-19-03	pp. 125-134
House concurred in Senate amendments (52-44)	02-25-03	p. 169

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