



**Sub. H.B. 40\***

125th General Assembly  
(As Reported by H. Finance & Appropriations)

Reps. Calvert (by request), D. Evans, Hoops

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**BILL 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 dates each month.
- Allows the Tax Commissioner to impose a charge for failure to make a payment under this accelerated schedule.
- Permits the Director of Job and Family Services 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, existing participants with income above a percentage specified in an order the Director of Job and Family Services issues may be disenrolled and eligibility for new participants may be limited to those with income above or below the specified percentage.
- No longer exempts a caretaker parent in need of special needs day-care from the requirement that the parent be employed or participating in an education or training program.
- Provides that a caretaker parent must comply with the requirement that changes in employment or participation in an education or training

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\* *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.*

program be reported not later than ten calendar days after the change occurs.

- Requires the Director of Job and Family Services to adopt rules establishing reimbursement ceilings for publicly funded child day-care, rather than rules establishing reimbursement rates.
- Requires a provider to be paid at the lowest of the provider's customary charges, the reimbursement ceiling set by rules, or a rate the county department of job and family services negotiates with the provider.
- Eliminates a 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 is higher than the provider's customary charge.
- Eliminates a county department of job and family services' authority to request a waiver of the reimbursement ceiling when a family has special circumstances or there are unique market conditions.
- Requires the Director of Job and Family Services to set the reimbursement ceiling for a type B family day-care home provider that has limited certification and provides day-care to children who have the same caretaker parent at 60% of the ceiling for fully certified type B family day-care homes.
- 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.
- Establishes procedures involving the creation of closure commissions when the Governor proposes to close state institutional facilities for the purpose of expenditure reductions or budget cuts.
- 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.



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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 bill 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	Pay ¼ of total tax liability for the same month in the <i>preceding</i> calendar year.
	23rd	Pay taxes due for the previous month minus amounts already paid for that month.

Vendors and sellers	11th	Pay taxes collected during the first 7 days of the month.
	18th	Pay taxes collected on the 8th through 14th day of the month.
	25th	Pay taxes collected on the 15th through the 21st day of the month.
	In lieu of this method, may remit taxes in same manner as direct payment permit holders.	
	23rd	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 bill 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 existing law, the charge must equal 5% of the amount required to be paid by EFT, but cannot 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 bill 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 bill 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 bill 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 in determining whether the threshold is met.

### 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. Under current law, the following categories of persons are to be provided publicly funded child day-care:

(1) Participants in the Ohio Works First Program;<sup>1</sup>

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

ODJFS is required by existing law to establish a procedure to monitor county expenditures to ensure that they do not exceed federal and state funds

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

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. The order may suspend new enrollment or limit new enrollment to those with incomes below a specified percentage of the federal poverty guidelines, but it may not otherwise narrow eligibility standards established by statute. The bill eliminates the restriction that the order not otherwise narrow eligibility standards established by statute. The department is not restricted to limiting new enrollment to participants with income below a specified percentage of the federal poverty guidelines but rather may limit new enrollment to participants with income above or below the specified percentage. The bill also provides that in addition to suspending or limiting enrollment of new participants, the order may disenroll existing participants with income above a specified percentage of the federal poverty guidelines.

**Special needs day-care no longer exempt from work requirement**

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

Under existing 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, unless the family's children are eligible for protective or special needs day-care.<sup>2</sup> The bill eliminates the exemption for families in need of special needs day-care.

**Report of change in employment status**

(R.C. 5104.34)

Current 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 bill requires that information to be reported not later than ten calendar days after the change occurs.

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<sup>2</sup> "Caretaker parent" means the father or mother of a child, a person who has legal custody of a child, a guardian of the child, and any other person who stands in loco parentis with respect to the child. "Special needs day-care" means 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(E) and(NN).)

**Reimbursement for publicly funded child day-care**

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

ODJFS is required to adopt rules establishing a procedure for determining rates of reimbursement for providers of publicly funded child day-care. For the purpose of establishing reimbursement rates, ODJFS must collect information concerning the amounts the provider charges. ODJFS is permitted to establish different rates based on the geographic location of the provider, type of care provided, age of the child served, special needs of the child, whether expanded hours of service are provided, whether weekend service is provided, whether the provider has exceeded the minimum requirements of state law and rules governing child day-care, and any other factors ODJFS considers appropriate. ODJFS must establish an enhanced rate of reimbursement for providers who provide child day-care for caretaker parents who work nontraditional hours.

Providers are reimbursed at the lower of the rate the provider customarily charges or the reimbursement rate established by ODJFS. If the provider provides day-care to parents who work nontraditional hours, however, the provider is reimbursed at the ODJFS reimbursement rate even if the rate the provider customarily charges is lower than the reimbursement rate. A county department of job and family services may 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 bill, 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 reimbursement ceiling established by ODJFS, or (3) a rate the county department negotiates with the provider. The bill eliminates a county department's authority to request a waiver of the reimbursement ceiling due to 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)

Current 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.<sup>3</sup> 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 current law that establishes maximum reimbursement rates for publicly funded day-care, type B homes with limited certification are 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 bill, 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.

### **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.

#### **Senate Bill 261 of the 124th General Assembly**

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 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.<sup>4</sup> 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

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<sup>3</sup> 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.

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

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. The act 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 bill, 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.

### **Closing of state institutional facilities**

(R.C. 107.31 and 107.32; Section 12)

The bill prohibits the Governor from ordering the closure of any state institutional facility, for the purpose of expenditure reductions or budget cuts, other than under new procedures it creates. "**State institutional facility**" means any institution or other facility for the housing of any person that is under the control of the Department of Rehabilitation and Correction, the Department of Youth Services, the Department of Mental Retardation and Developmental Disabilities, the Department of Mental Health, or any other agency or department of state government.

If the Governor determines that necessary expenditure reductions and budget cuts cannot be made without closing one or more state institutional facilities, the Governor must determine which state agency's institutional facility or facilities should be closed (i.e., the "**target state agency**"), notify the General Assembly and that agency of the determination, and specify the number of facilities of the agency that the Governor believes should be closed.

### **State Facilities Closure Commission**

Upon the Governor's provision of the required notice, the State Facilities Closure Commission is created. The Commission is to consist of the following 11 members:

(1) Three members of the House of Representatives, appointed by the Speaker of the House of Representatives, none of whom have a state institutional facility of the target state agency in the member's district. (Two of the appointees

must be members of the majority political party in the House of Representatives and one must not be a member of that political party.)

(2) Three members of the Senate, appointed by the President of the Senate, none of whom have a state institutional facility of the target state agency in the member's district. (Two of the appointees must be members of the majority political party in the Senate and one must not be a member of that political party.)

(3) The Director of Budget and Management;

(4) The director, or other agency head, of the target state agency;

(5) Two private executives with expertise in facility utilization, one appointed by the Speaker of the House of Representatives and one appointed by the President of the Senate, neither of whom have a state institutional facility of the target state agency in the county in which the appointee resides;

(6) One representative of the Ohio Civil Service Employees' Association or other representative association of the employees of the target state agency, appointed by the Speaker of the House of Representatives.

Members of the Commission must be appointed within seven days after the Governor provides the required notice, and are required to serve without compensation. If more than one state agency or department is a target state agency, a separate state facilities closure commission must be appointed for each target state agency.

The bill requires the Commission to determine which state institutional facility or facilities under the control of the target state agency for which the Commission was created should be closed. In making this determination, the Commission must, at a minimum, consider the following factors:

(1) Whether there is a need to reduce the number of facilities;

(2) The availability of alternate facilities;

(3) The cost effectiveness of the facilities;

(4) The geographic factors associated with each facility and its proximity to other similar facilities;

(5) The impact of collective bargaining on facility operations;

(6) The utilization and maximization of resources;

(7) Continuity of the staff and ability to serve the facility population;



- (8) Continuing costs following closure of the facility;
- (9) The impact of the closure on the local economy;
- (10) Alternatives and opportunities for consolidation with other facilities.

The Commission is to meet as often as necessary to make its determination and may take testimony and consider all relevant information. Within 30 days after the Governor provides the required notice, the Commission must prepare a report containing its recommendations as to the facility or facilities the Governor may close and submit that report to the General Assembly, the Governor, and the target state agency. The Commission's recommendation must identify the same number of state institutional facilities as the Governor specified in the Governor's notice and, if the recommendation identifies more than one facility, it is to list them in order of the Commission's preference for closure. The Commission's report can address only the target state agency for which it was created and not any other state agency or department. Upon providing the report, the Commission ceases to exist.

Upon receipt of the Commission's report, if the Governor still believes that necessary expenditure reductions and budget cuts cannot be made without closing one or more state institutional facilities, the Governor may close state institutional facilities of the target state agency that are identified in the Commission's recommendation contained in the report. The Governor cannot close any state institutional facility of the target state agency that is not listed in the Commission's recommendation, and cannot close multiple institutions in any order other than the order of the Commission's preference as specified in the recommendation. However, the Governor is not required to follow the recommendation of the Commission in closing an institutional facility if the Governor determines that a significant change in circumstances make the recommendation unworkable.

#### **Effect of prior order to close**

If, prior to the effective date of this provision, the Governor has issued an order requiring the closure of a state institutional facility, but, as of that date, that facility has not yet been closed, the procedures established by the bill are to apply to the closure of the facility, notwithstanding the Governor's order.

#### **Privately operated correctional facilities**

If the closure of the particular facility is authorized by a state facilities closure commission, the Governor may terminate any contract entered into for the private operation and management of any correctional facility under the control of the Department of Rehabilitation and Correction, including, but not limited to, the

initial intensive program prison established for felony OMVI offenders, and terminate the operation of and close that facility. If the Governor terminates a contract for the private operation and management of a facility, and terminates the operation of and closes the facility, inmates in the facility are to be transferred to another correctional facility under the control of the Department. The bill states that, if the initial intensive program prison is closed, the continuing law provisions requiring the placement of such offenders in the prison have no effect while the facility is closed.

**Allocation of appropriations for the care and custody of felony delinquents**

(R.C. 5139.41)

Under current 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 bill provides that, if the Department's appropriation for a fiscal year is subsequently revised, the Department may adjust the amounts that have been allocated under the formula.

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**HISTORY**

ACTION	DATE	JOURNAL ENTRY
Introduced	02-05-03	p. 121
Reported, H. Finance & Appropriations	02-11-03	pp. 145-146

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