

1 State of Arkansas As Engrossed: S3/15/21 S3/17/21

2 93rd General Assembly

# A Bill

3 Regular Session, 2021

SENATE BILL 295

4

5 By: Senator Flippo

6 By: Representative Lundstrum

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## For An Act To Be Entitled

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

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## Subtitle

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

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

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22 SECTION 1. DO NOT CODIFY. Legislative findings.

23 The General Assembly finds that:

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

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

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

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

34 20-76-215. Program integrity in Supplemental Nutrition Assistance  
35 Program.

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



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

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

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

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

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

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

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

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

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

36 (1) From the Department of Health concerning individuals

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

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

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

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

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

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

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

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

30 (3) Improper payments and expenditures;

31 (4) Monies recovered;

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

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

36 (e) If the Department of Human Services receives information

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

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

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

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

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

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

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

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

29 (2) As used in this subsection:

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

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

1 accepted by the state Medicaid agency.

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

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

9 20-77-2104. Medicaid eligibility verification.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21 (3) Improper payments and expenditures;

22 (4) Monies recovered; and

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

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

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

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33 20-77-2105. Additional program integrity measures.

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

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

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

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

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

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

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

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

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

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

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

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

28 23-115-105. Data sharing with Department of Human Services.

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

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

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

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

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/s/Flippo