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Representative Young

Cosponsors: Representatives Becker, Dean, Hambley, Hill, Seitz, Brenner, Anielski, Antonio, Arndt, Barnes, Boggs, Boyd, Brown, Carfagna, Celebrezze, Craig, Cupp, Dever, Edwards, Fedor, Galonski, Gavarone, Ginter, Green, Greenspan, Hagan, Henne, Holmes, Hoops, Householder, Hughes, Johnson, Keller, Kent, Landis, Lanese, Lang, LaTourette, Leland, Manning, Miller, O'Brien, Patton, Pelanda, Perales, Reineke, Rezabek, Riedel, Rogers, Ryan, Schaffer, Scherer, Sheehy, Slaby, Smith, R., Sprague, Stein, Strahorn, Sweeney, Thompson, West

A BILL

To amend sections 5101.26, 5101.27, 5160.45, and 5160.46 and to enact section 5167.15 of the Revised Code regarding access to information concerning public and medical assistance recipients.

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

Section 1. That sections 5101.26, 5101.27, 5160.45, and 5160.46 be amended and section 5167.15 of the Revised Code be enacted to read as follows:

Sec. 5101.26. As used in this section and in sections 5101.27 to 5101.30 of the Revised Code:

(A) "County agency" means a county department of job and family services, child support enforcement agency, or a public children services agency.

(B) "Fugitive felon" means an individual who is fleeing to avoid prosecution, or custody or confinement after conviction, under the laws of the place from which the individual is fleeing, for a crime or an attempt to commit a crime that is a felony under the laws of the place from which the individual is fleeing or, in the case of New Jersey, a high misdemeanor, regardless of whether the individual has departed from the individual's usual place of residence.

(C) "Information" means records as defined in section 149.011 of the Revised Code, any other documents in any format, and data derived from records and documents that are generated, acquired, or maintained by the department of job and family services, a county agency, or an entity performing duties on behalf of the department or a county agency.

(D) "Law enforcement agency" means the state highway patrol, an agency that employs peace officers as defined in section 109.71 of the Revised Code, the adult parole authority, a county department of probation, a prosecuting attorney, the attorney general, similar agencies of other states, federal law enforcement agencies, and postal inspectors. "Law enforcement agency" includes the peace officers and other law enforcement officers employed by the agency.

(E) "Public assistance" means financial assistance or social services that are provided under a program administered by the department of job and family services or a county agency pursuant to Chapter 329., 5101., 5104., 5107., or 5108. of the Revised Code or an executive order issued under section 107.17 of the Revised Code. "Public assistance" does not mean medical assistance provided under a medical assistance program, as defined in section 5160.01 of the Revised Code.

(F) "Public assistance recipient" means an applicant for 44
or recipient or former recipient of public assistance. 45

Sec. 5101.27. (A) Except as permitted by this section, 46
section 5101.273, 5101.28, or 5101.29 of the Revised Code, or 47
rules adopted under section 5101.30 of the Revised Code, or when 48
required by federal law, no person or government entity shall 49
knowingly solicit, disclose, receive, use, ~~or knowingly~~ permit 50
the use of, or participate in the use of any information 51
regarding a public assistance recipient for any purpose not 52
directly connected with the administration of a public 53
assistance program. 54

(B) To the extent permitted by federal law, the department 55
of job and family services and county agencies shall do all of 56
the following: 57

(1) Release information regarding a public assistance 58
recipient, for purposes directly connected to the administration 59
of the program providing assistance to the recipient, to a 60
government entity responsible for administering that public 61
assistance program; 62

(2) Provide access to information regarding a public 63
assistance recipient to a state, federal, or federally assisted 64
program that provides cash or in-kind assistance or services 65
directly to individuals based on need or for the purpose of 66
protecting children to a government entity responsible for 67
administering a children's protective services program; 68

(3) Provide access to information included in a child 69
support order to a state, federal, or federally assisted program 70
that provides cash or in-kind assistance or services directly to 71
individuals based on need or for the purpose of protecting 72

children to a government entity responsible for administering a 73
children's protective services program; 74

(4) Provide information regarding a public assistance 75
recipient to a law enforcement agency for the purpose of any 76
investigation, prosecution, or criminal or civil proceeding 77
relating to the administration of that public assistance 78
program; 79

~~(3) Provide, for~~ (5) For purposes directly connected to 80
the administration of a program that assists needy individuals 81
with the costs of public utility services, provide information 82
regarding a recipient of financial assistance provided under a 83
program administered by the department or a county agency 84
pursuant to Chapter 5107. or 5108. of the Revised Code to an 85
entity administering the public utility services program; 86

(6) For purposes directly connected to the administration 87
of a medical assistance program, as defined in section 5160.01 88
of the Revised Code, provide access to information regarding a 89
public assistance recipient or included in a child support order 90
to a government entity administering the medical assistance 91
program. 92

(C) To the extent permitted by federal law and section 93
1347.08 of the Revised Code, the department and county agencies 94
shall provide access to information regarding a public 95
assistance recipient to all of the following: 96

(1) The recipient; 97

(2) The authorized representative; 98

(3) The legal guardian of the recipient; 99

(4) The attorney of the recipient, if the attorney has 100

written authorization that complies with section 5101.272 of the Revised Code from the recipient.

~~(D) To the extent permitted by federal law and subject to division (E) of this section, the department and county agencies may do both of the following:~~

~~(1) Release release information about a public assistance recipient if the recipient gives voluntary, written authorization that complies with section 5101.272 of the Revised Code;~~

~~(2) Release information regarding a public assistance recipient to a state, federal, or federally assisted program that provides cash or in-kind assistance or services directly to individuals based on need or for the purpose of protecting children to a government entity responsible for administering a children's protective services program.~~

~~(E) Except when the release is required by division (B), or (C), or (D) (2) of this section, the department or county agency shall release the information only in accordance with the authorization. The department or county agency shall provide, at no cost, a copy of each written authorization to the individual who signed it.~~

(E) If the department or county agency determines that it cannot comply with division (B) (2), (3), or (6) of this section, the department shall submit a request to the attorney general for a formal opinion on the question of whether it can comply. Not later than ten days after receiving the opinion, the department shall submit a copy of it to the general assembly in accordance with section 101.68 of the Revised Code.

~~(F) The department of job and family services may adopt~~

rules defining "authorized representative" for purposes of	130
division (C) (2) of this section.	131
Sec. 5160.45. (A) As used in sections 5160.45 to 5160.481	132
of the Revised Code, "information" means all of the following:	133
(1) Records, as defined in section 149.011 of the Revised	134
Code;	135
(2) Any other documents in any format;	136
(3) Data derived from records and documents that are	137
generated, acquired, or maintained by the department of	138
medicaid, a county department of job and family services, or an	139
entity performing duties on behalf of the department or a county	140
department.	141
(B) Except as permitted by this section, section 5160.47,	142
or rules authorized by section 5160.48 or 5160.481 of the	143
Revised Code, or when required by federal law, no person or	144
government entity shall <u>knowingly</u> use or disclose information	145
regarding a medical assistance recipient for any purpose not	146
directly connected with the administration of a medical	147
assistance program.	148
(C) Both of the following shall be considered to be	149
purposes directly connected with the administration of a medical	150
assistance program:	151
(1) Treatment, payment, or other operations or activities	152
authorized by 42 C.F.R. Chapter IV;	153
(2) Any administrative function or duty the department of	154
medicaid performs alone or jointly with a federal government	155
entity, another state government entity, or a local government	156
entity implementing a provision of federal law.	157

(D) To the extent permitted by federal law, the department of medicaid or a county department of job and family services shall do all of the following: 158
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(1) Provide information regarding a medical assistance recipient, for purposes directly connected to the administration of the program providing assistance to the recipient, to a government entity responsible for administering that medical assistance program; 161
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(2) Provide access to information regarding a medical assistance recipient to a state, federal, or federally assisted program that provides cash or in-kind assistance or services directly to individuals based on need or for the purpose of protecting children to a government entity responsible for administering a children's protective services program; 166
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(3) For purposes directly connected to the administration of a public assistance program, as defined in section 5101.26 of the Revised Code, provide access to information regarding a medical assistance recipient to a government entity administering the public assistance program. 172
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(E) The department of medicaid or a county department of job and family services may disclose information regarding a medical assistance recipient to any of the following: 177
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(1) The recipient or the recipient's authorized representative; 180
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(2) The recipient's legal guardian in accordance with division (C) of section 2111.13 of the Revised Code; 182
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(3) The attorney of the recipient, if the department or county department has obtained authorization from the recipient or the recipient's authorized representative or legal guardian 184
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that meets all requirements of the Health Insurance Portability 187
and Accountability Act of 1996, 42 U.S.C. 1320d et seq., 188
regulations promulgated by the United States department of 189
health and human services to implement the act, section 5160.46 190
of the Revised Code, and any rules authorized by section 5160.48 191
of the Revised Code; 192

(4) A health information or health records management 193
entity that has executed with the department a business 194
associate agreement required by 45 C.F.R 164.502(e) (2) and has 195
been authorized by the recipient or the recipient's authorized 196
representative or legal guardian to receive the recipient's 197
electronic health records in accordance with rules authorized by 198
section 5160.48 of the Revised Code; 199

(5) A court if pursuant to a written order of the court. 200

~~(E)~~ (F) The department of medicaid may receive from county 201
departments of job and family services information regarding any 202
medical assistance recipient for purposes of training and 203
verifying the accuracy of eligibility determinations for a 204
medical assistance program. The department may assemble 205
information received under this division into a report if the 206
report is in a form specified by the department. Information 207
received and assembled into a report under this division shall 208
remain confidential and not be subject to disclosure pursuant to 209
section 149.43 or 1347.08 of the Revised Code. 210

~~(F)~~ (G) The department of medicaid shall notify courts in 211
this state regarding its authority, under division ~~(D)~~ (E) (5) of 212
this section, to disclose information regarding a medical 213
assistance recipient pursuant to a written court order. 214

(H) If the department of medicaid or a county department 215

of job and family services determines it cannot comply with 216
division (D) (2) or (3) of this section, the department of 217
medicaid shall submit a request to the attorney general for a 218
formal opinion on the question of whether it can comply. Not 219
later than ten days after receiving the opinion, the department 220
of medicaid shall submit a copy of it to the general assembly in 221
accordance with section 101.68 of the Revised Code. 222

Sec. 5160.46. (A) For the purposes of section 5160.45 of 223
the Revised Code, an authorization shall be made on a form that 224
uses language understandable to the average person and contains 225
all of the following: 226

(1) A description of the information to be used or 227
disclosed that identifies the information in a specific and 228
meaningful fashion; 229

(2) The name or other specific identification of the 230
person or class of persons authorized to make the requested use 231
or disclosure; 232

(3) The name or other specific identification of the 233
person or government entity to which the information may be 234
released; 235

(4) A description of each purpose of the requested use or 236
disclosure of the information; 237

(5) The date on which the authorization expires or an 238
event related either to the individual who is the subject of the 239
request or to the purposes of the requested use or disclosure, 240
the occurrence of which will cause the authorization to expire; 241

(6) A statement that the information used or disclosed 242
pursuant to the authorization may be disclosed by the recipient 243
of the information and may no longer be protected from 244

disclosure;	245
(7) The signature of the individual or the individual's authorized representative and the date on which the authorization was signed;	246 247 248
(8) If signed by an authorized representative, a description of the representative's authority to act for the individual;	249 250 251
(9) A statement of the individual or authorized representative's right to prospectively revoke the written authorization in writing, along with either of the following:	252 253 254
(a) A description of how the individual or authorized representative may revoke the authorization;	255 256
(b) If the department of medicaid has established a privacy notice that contains a description of how the individual or authorized representative may revoke the authorization, a reference to the privacy notice.	257 258 259 260
(10) A statement that treatment, payment, enrollment, or eligibility for a medical assistance program cannot be conditioned on signing the authorization unless the authorization is necessary for determining eligibility for the program.	261 262 263 264 265
(B) An authorization for the release of information regarding a medical assistance recipient to the recipient's attorney under division (D) <u>(E)</u> (3) of section 5160.45 of the Revised Code may include a provision specifically authorizing the release of the recipient's electronic health records, if any, in accordance with rules authorized by section 5160.48 or 5160.481 of the Revised Code.	266 267 268 269 270 271 272

(C) When an individual requests information pursuant to 273
section 5160.45 of the Revised Code regarding the individual's 274
enrollment in a medical assistance program and does not wish to 275
provide a statement of purpose, the statement "at request of the 276
individual" is a sufficient description for purposes of division 277
(A) (4) of this section. 278

Sec. 5167.15. The department of medicaid shall require a 279
medicaid managed care organization to comply with sections 280
5160.45 and 5160.46 of the Revised Code as if the organization 281
were the department. 282

Section 2. That existing sections 5101.26, 5101.27, 283
5160.45, and 5160.46 of the Revised Code are hereby repealed. 284

Section 3. Sections 5101.26, 5101.27, 5160.45, 5160.46, 285
and 5167.15 of the Revised Code, as amended or enacted by this 286
act, shall take effect on the one hundred eightieth day after 287
the effective date of this act. 288