



1108 City Park Avenue, Suite 200
Columbus, OH 43206
(614)827-0549
www.ohiopovertylawcenter.org

TESTIMONY IN OPPOSITION TO HOUSE BILL 50

**Graham Bowman, Ohio Poverty Law Center
April 10, 2018**

Senate Health, Human Services, and Medicaid Committee

Good afternoon Chairman Burke, Vice-Chair Beagle, Ranking Member Tavares and members of the Senate Health, Human Services and Medicaid Committee,

Thank you for allowing me to testify today regarding House Bill 50. My name is Graham Bowman and I am a staff attorney with the Ohio Poverty Law Center. The Ohio Poverty Law Center is a state-wide nonprofit law office that advocates for evidenced-based policies aimed at protecting the rights of low-income Ohioans living, working, and raising their families in poverty. We work closely with eight legal aid agencies that represent thousands of families every year across the state in promoting access to healthcare, family stability, and expanded access to justice and opportunity.

We oppose HB 50 for three reasons: First, it will cause enormous confusion for retailers and the customers that will lead to longer lines and conflict at the grocery store, which may force legal aid organizations to pursue legal remedies against retailers. Second, it will require an enormous investment of time and resources to implement in accordance with federal law. And above all else, it will not be effective at reducing fraud.

These flaws are not unique to Ohio. At least 18 states have considered implementing SNAP photo EBT cards in the past ten years. Nearly all of them never moved forward due to concerns over cost, implementation, and effectiveness. Only four states implemented these requirements, Maine, Massachusetts, New York, and Missouri. Of those four, New York and Missouri abandoned the program. Massachusetts and Maine both received media attention for their failure to implement the requirement properly and Food and Nutrition Services (FNS), the federal agency that administers the program, threatened to withhold SNAP funds from both states due to those problems.

1. Confusion for retailers and customers

There are two central flaws for any SNAP photo EBT program that arise under federal law. First, any household member, or a chosen non-member, may use the card to purchase groceries. Cashiers must allow any individual to use an EBT card for which they know the PIN. Second, SNAP retailers are prohibited from treating customers who purchase food with a SNAP EBT card differently from other customers.

If HB 50 becomes law, all 9,612 SNAP authorized retailersⁱ in Ohio will need to ensure on an ongoing basis that none of their cashiers or managers turn away individuals who attempt to use a photo EBT card and are not the person pictured on the card. If the business implements a policy of checking photo EBT cards at all, they must ensure that they also check the ID of all other customers who make purchases with debit or credit cards.

Retailers, and ultimately the state, will need to remain diligent in training employees because the mere fact the EBT cards contain a photo seems to imply that only the photographed person may use the card, when in fact there could be any number of people who are unrelated to the photographed individual that may use the card. Why else would SNAP EBT cards have photos but not other types of debit cards? Furthermore, it is not intuitive that a cashier must begin checking the ID of all customers because they started checking photo EBT cards.

FNS shares these concerns. In the introduction to a new rule for photo EBT cards issued in December 2016, the agency stated:

“There have been significant issues with recent attempts to place photos on EBT cards, including confusion at stores where clients have been turned away because of misunderstanding/misapplication of policy [and] confusion among clients regarding who can use the card in the household because of the photo on the card...”ⁱⁱ

Massachusetts began issuing photo EBT cards in 2013. FNS found that state workers, retailers, and recipients were poorly trained on the various rules of the SNAP program and retailers routinely improperly denied recipients use of their card for not being the photographed household member.ⁱⁱⁱ The *Boston Globe* covered the dysfunction in December 2014 and wrote about an instance where a 46-year-old mother of two was turned away by a Costco cashier and management in front of a crowd of people because her husband’s photo was on the card.^{iv} The issues were severe enough that FNS sent a letter to the state requesting that it halt all further implementation of the program and threatened to withhold federal funding for the program. Eventually retailers learned to completely ignore the photos, which cost the state approximately 4.4 million dollars a year to implement.

Similarly, Missouri conducted an audit of its photo EBT card program in 2001 and found it to be “useless” when it came to rooting out fraud in the SNAP program.^v Retailers began training their staff to disregard the photos entirely to not violate federal law.^{vi} The state ended the program after less than two years.

Maine’s photo EBT card is voluntary. However, in November 2014 FNS threatened to cut federal SNAP funding after it determined that Maine was operating the program as if it were mandatory.

2. Implementation and Financial Burdens on the State

In response to the problems in Massachusetts and Maine, FNS issued detailed rules in December 2016 for states attempting to implement SNAP photo EBT cards. FNS issued this warning:

“implementation involves complex legal, operational, and civil rights considerations; if not well planned, it can inhibit benefit access for eligible participants which could violate federal law.”^{vii}

The rule requires the state to submit to FNS a pre-approval plan for the program that provides detail on all aspects of the program and how particular issues will be addressed. Among other requirements, the plan must:

1. demonstrate that its existing SNAP program is meeting many performance metrics before it may add a photo ID requirement.
2. provide details, including a timeline, of how ODJFS will meet many specific requirements to ensure SNAP recipients are not denied benefits because of the program.
3. establish procedures to ensure that obtaining a photo from the household is not made a condition of eligibility.^{viii} This means that a case may not be denied because a SNAP recipient fails to have their photograph taken. The application and approval process may not be altered in any way to incorporate the photo requirement.^{ix}
4. be able to address, on a case-by-case basis, situations where an applicant faces a hardship to having their photo taken so benefits are not withheld. For example, individuals that lack transportation, cannot come into a JFS office due to work, are ill, or live in a rural area.^x
5. Ensure that if a household member does not comply with the photo requirement, JFS must have a procedure to continue to provide benefits to the rest of the household at a reduced amount and allow the non-compliant member's benefits to accrue until they comply with the photo requirement.^{xi} A newly compliant recipient must be issued benefits within two business days.^{xii}

ODJFS must also submit a post-implementation assessment 120 days after implementation that addresses any problems that arose and how they were resolved, including the “degree to which staff, clients, and retailers properly understood and implemented the new provisions.”^{xiii} Among other data, the report must also include independently conducted surveys of clients and retailers. 80% of retailers must demonstrate full understanding of the policies related to the photo EBT card.^{xiv}

If HB 50 becomes law, Ohio would be the first state to attempt to comply with these burdensome rules and would be attempting to do so while Jobs and Family Services is also tasked with overhauling its eligibility and enrollment system and, potentially, implementing a Medicaid work requirement. There are substantial risks that this additional burden can and will throw county Jobs and Family Services offices into disarray and that FNS could threaten to withhold federal dollars like they did to Massachusetts and Maine.

3. Legal Aid's Duty to Respond

If HB 50 becomes law, we anticipate that legal aid organizations throughout the state will experience an influx of SNAP cases where recipients were improperly denied use of their SNAP benefits at retailers who misunderstood the rules of the SNAP program. This may result in legal aid organizations needing to file administrative complaints with FNS against retailers that may result in monetary penalties or disqualification from the SNAP program.

In addition to confusion among retailers, legal aid organizations anticipate that county Jobs and Family Services offices will struggle to implement this complex new program and that SNAP applicants will inadvertently be denied or delayed access to benefits inappropriately. This will lead to an increase in administrative appeals that will add additional avoidable stress to already burdened local offices.

4. Conclusion

While we are opposed to HB 50, in no way do we condone or excuse activity that is intentionally fraudulent. Fraud jeopardizes the ability of programs to provide vital assistance to the overwhelming majority of low-income households who genuinely need assistance and are honest and play by the rules. Instead, we oppose HB 50 because (1) it would lead to substantial disruptions in grocery stores and other retailers that will make it more difficult for SNAP recipients to purchase food, and (2) it would create numerous administrative barriers to applying for benefits. All the while, these disruptions will prove costly and ineffective at fighting fraud yet make it more difficult for low-income families to put food on the table.

Thank you for the opportunity to testify and I am available to answer any questions.

Graham Bowman
Staff Attorney
Ohio Poverty Law Center

Endnotes

ⁱ FOOD AND NUTRITION SERVICES, 2016 Year End Summary, <https://fns-prod.azureedge.net/sites/default/files/snap/2016-SNAP-Retailer-Management-Year-End-Summary.pdf>.

ⁱⁱ 81 FR 89831-01 at 2-3.

ⁱⁱⁱ Gregory B. Mills and Christopher Lowenstein, URBAN INSTITUTE, *Assessing the Merits of Photo EBT Cards in Supplemental Nutrition Assistance Programs* (March 2015), <https://www.urban.org/sites/default/files/publication/44641/2000159-Assessing-the-Merits-of-Photo-EBT-Cards-in-the-Supplemental-Nutritional-Assistance-Program.pdf>.

^{iv} Megan Woolhouse, *US orders Mass. To fix food stamps procedures*, BOSTON GLOBE, Dec. 8, 2014, <https://www.bostonglobe.com/business/2014/12/08/usda-says-photos-food-stamp-cards-blocking-some-families-from-benefits/W0JbAUE6J0rODLX7UboMMK/story.html>.

^v OFFICE OF STATE AUDITOR CLAIRE McCASKILL, *Audit of Department of Social Services Electronic Benefit Security Card and Electronic Benefit Transfer Benefit Delivery System (August 3 2001)* at 2, <https://app.auditor.mo.gov/repository/press/2001-58.pdf> at 2; “The state and federal government have split the \$1.8 million cost to place client photographs on the electronic benefit security cards . . . State officials expected the cards to help deter fraud, but federal regulations allow any family member to use the card, which renders the photographs useless for fraud or identification. Retailers, in fact, are trained to ignore the photograph, since transactions are valid if the purchaser has the card and the personal identification number.”

^{vi} *Id.*

^{vii} 81 FR 89831-01 at 2.

^{viii} 7 C.F.R 274.8(f)(2).

^{ix} 7 C.F.R 274.8(f)(3).

^x 7 C.F.R 274.8(f)(5).

^{xi} 7 C.F.R 274.8(f)(7).

^{xii} 7 C.F.R 274.8(f)(8).

^{xiii} 7 C.F.R 274.8(f)(16).

^{xiv} *Id.*