

## OFFICE OF POLICY AND LEGAL ANALYSIS

Date: April 22, 2021  
To: Joint Standing Committee on Health & Human Services  
From: Anna Broome, Legislative Analyst

### **LD 287 An Act To Require Electronic Benefits Transfer Cards To Be Printed with the Beneficiary's Photograph**

**SUMMARY:** This bill requires the Commissioner of Health and Human Services to place a photograph of a recipient of an electronic benefits card by removing the requirement that the recipient must agree in writing to have their photograph on the card.

#### **ISSUES FROM TESTIMONY:**

- Sponsor: concerns about SNAP error rate and integrity of the program.
- Opponents: photographs on EBT cards expensive and don't improve integrity. Federal law and regs require all customers to be treated the same, include exemptions from photographs for majority of recipients, and allow for the use of the EBT card by other individuals. Fraud is more of a problem among retailers.

#### **DRAFTING ISSUES:**

- Second sentence, as amended in the bill, now states that a recipient of an EBT card who is a minor or incapacitated individual *may* have a photograph of the parent or legal guardian and strikes out the if agreed in writing. Whose photograph is supposed to be on the cards of these recipients?
- No provision for exemptions as required by federal regs (see 7 CFR 274.8 (f) below)

#### **ADDITIONAL INFORMATION REQUESTED BY COMMITTEE:**

From DHHS:

- Information on fraud incidence and error rates with timeline (before, during and after photos were required in ME). Committee members requested this information of the AG's office. The AG's office said they do not typically EBT fraud cases because, absent special circumstances, they have a \$5,000 threshold for prosecution of felony theft cases and EBT cases do not usually meet that threshold. Question referred to DHHS which has a Fraud Investigation Unit.
- Cost of reinstating photo ID (this was in DHHS's testimony – \$186,000 for card stock and mailing and additional ongoing costs. CRS in 2018 – the states that considered it ranged from \$1.6m in NH to \$25.1m in NC (data from fiscal notes on bills). <https://fas.org/sgp/crs/misc/R45147.pdf> pp 34-35.
- List of individuals exempt from photos (see below): >60, <18, homeless, victims of domestic violence, those with disabilities, religious concern. Parameters for people under 18 who have SNAP? DHHS providing a ME-specific breakdown.
- Who can legally use an EBT card on the recipient's behalf?
- Training for vendors?
- Are stores supposed to ask for ID and signature? There are no federal or state laws requiring this. Credit card companies set those rules including in their contracts with merchants. If a credit card is signed, can't require a person to present their ID.

## **FISCAL IMPACT:**

Not yet received from OFPR.

## Federal law and rules:

### **7 USC Sec. 2016(h)(9):**

(9)OPTIONAL PHOTOGRAPHIC IDENTIFICATION.—

(A)In general.—

A [State agency](#) may require that an electronic [benefit](#) card contain a photograph of 1 or more members of a [household](#).

(B)Other authorized users.—

If a [State agency](#) requires a photograph on an electronic [benefit](#) card under subparagraph (A), the [State agency](#) shall establish procedures to ensure that any other appropriate member of the [household](#) or any authorized representative of the [household](#) may utilize the card.

**7 CFR §278.2** – (b) for equal treatment; (h) for PIN and accepting regardless of picture requirement

### **§ 278.2 Participation of retail food stores.**

(a) *Use of coupons.* Coupons may be accepted by an authorized retail food store only from eligible households or the households' authorized representative, and only in exchange for eligible food. Coupons may not be accepted in exchange for cash, except when cash is returned as change in a transaction in which coupons were accepted in payment for eligible food under paragraph (d) of this section. Coupons may not be accepted in payment of interest on loans or for any other nonfood use. An authorized retail food store may not accept coupons from another retail food store, except that public or private nonprofit homeless meal providers may redeem coupons for eligible food through authorized retail food stores.

(b) *Equal treatment for coupon customers.* Coupons shall be accepted for eligible foods at the same prices and on the same terms and conditions applicable to cash purchases of the same foods at the same store except that tax shall not be charged on eligible foods purchased with coupons. However, nothing in this part may be construed as authorizing FNS to specify the prices at which retail food stores may sell food. However, public or private nonprofit homeless meal providers may only request *voluntary* use of SNAP benefits from homeless SNAP recipients and may not request such household using SNAP benefits to pay more than the average cost of the food *purchased* by the public or private nonprofit homeless meal provider contained in a meal served to the patrons of the meal service. For purposes of this section, “average cost” is

determined by averaging food costs over a period of up to one calendar month. Voluntary payments by SNAP recipients in excess of such costs may be accepted by the meal providers. The value of donated foods from any source shall not be considered in determining the amount to be requested from SNAP recipients. All indirect costs, such as those incurred in the acquisition, storage, or preparation of the foods used in meals shall also be excluded. In addition, if others have the option of eating free or making a monetary donation, SNAP recipients must be provided the same option of eating free or making a donation in money or SNAP benefits. No retail food store may single out coupon users for special treatment in any way.

(c) *Accepting coupons.* No authorized retail food store may accept coupons marked "paid," "canceled," or "specimen." Nor may a retail food store accept coupons bearing any cancellation or endorsement, or coupons of other than the 1-dollar denomination which have been detached from the coupon books prior to the time of purchase or delivery of eligible food unless the detached coupons are accompanied by the coupon books which bear the same serial numbers that appear on the detached coupons. However, in the case of public or private nonprofit homeless meal providers, retail food stores may accept detached coupons which have been accepted by the homeless meal provider. It is the right of the household member or the authorized representative to detach the coupons from the book.

(d) *Making change.* An authorized retail food store shall use, for the purpose of making change, uncanceled and unmarked 1-dollar coupons which were previously accepted for eligible foods. If change in an amount of less than 1-dollar is required, the eligible household shall receive the change in cash. However, in the case of public or private nonprofit homeless meal providers, neither cash change nor credit slips shall be provided under any circumstances when SNAP benefits are used to purchase meals. At no time may cash change in excess of 99 cents be returned in a coupon transaction. An authorized retail food store may not engage in a series of coupon transactions the purpose of which is to provide the same SNAP customer an amount of cash change greater than the maximum 99 cents cash change allowed in one transaction.

(e) *Accepting coupons before delivery.* Food retailers may not accept coupons before delivering the food, retain custody of any unspent coupons, or in any way prevent an eligible household from using coupons in making purchases from other authorized firms. However, a nonprofit cooperative food purchasing venture may accept coupons from a member of the cooperative at the time the member places a food order. The food ordered must be made available to the member within 14 days from the day the cooperative receives the member's coupons.

(f) *Paying credit accounts.* SNAP benefits shall not be accepted by an authorized retail food store in payment for items sold to a household on credit. A firm that commits such violations shall be disqualified from participation in SNAP for a period of one year.

(g)

(1) *Redeeming coupons.* Authorized retail food stores may exchange coupons accepted in accordance with this part for face value upon presentation through the banking system or through a wholesale food concern authorized to accept coupons from that retailer. Authorized drug addict or alcoholic treatment and rehabilitation programs, group living arrangements, and shelters for battered women and children may present coupons for redemption through authorized wholesale food concerns. A drug addict or alcoholic treatment center, group living arrangement, or shelter for battered women and children may purchase food in authorized retail food stores as the authorized representative of its participating households. Public or private nonprofit homeless meal providers may purchase food in authorized retail food stores and through authorized wholesale food concerns. Authorized drug addict and alcoholic treatment and rehabilitation programs, group living arrangements, shelters for battered women and children, and public or private nonprofit homeless meal providers for homeless SNAP households shall not present coupons directly to an insured financial institution for redemption.

(2) Notwithstanding [paragraph \(g\)\(1\)](#) of this section, authorized drug addict and alcoholic treatment and rehabilitation programs, group living arrangements, shelters for battered women and children, and public or private nonprofit homeless meal providers for homeless SNAP households may be authorized to redeem EBT benefits directly through an insured financial institution in areas where an Electronic Benefit Transfer (EBT) system has been implemented.

(h) *Identifying benefit users.* Retailers must accept payment from EBT cardholders who have a valid PIN regardless of which State the card is from or whether the individual is pictured on the card. Where photo EBT cards are in use, the person presenting the photo EBT card need not be pictured on the card, nor does the individual's name need to match the one on the card if the State includes names on the card. However, benefits may not knowingly be accepted from persons who have no right to possession of benefits. If fraud is suspected, retailers shall report the individual to the USDA OIG Fraud Hotline.

(i) [Reserved]

(j) *Checking hunting and fishing equipment users.* Authorized Alaskan retailers shall require coupon customers wanting to purchase hunting and fishing equipment with coupons to show their ID cards to determine that they live in an area designated by FNS as one in which persons are dependent upon hunting and fishing for subsistence.

(k) [Reserved]

(l) *Checking public or private nonprofit homeless meal provider recipients.* Public or private nonprofit homeless meal providers shall establish a SNAP patron's right to purchase meals with coupons.

**7 CFR 274.8 (f)** – see (4) for exemptions:

(f) *State agency requirements for photo EBT card implementation* - (1) Minimum requirements. Prior to implementation, State agencies must be performing sufficiently well in program administration to be eligible to implement the photo EBT card option.

Prior to implementation, State agencies must demonstrate to FNS successful administration of SNAP based on SNAP performance standards. Successful program administration will take into account at a minimum the metrics related to program access, the State's payment error rate, the State's Case and Procedural Error Rate, application processing timeliness, including both the 7-day expedited processing and the 30-day processing standards, timeliness of recertification actions, and other metrics, as determined by the Secretary, that may be relevant to the State agency's implementation of photo EBT cards.

(2) *Function of issuance.* The photo EBT card option is a function of issuance and not a condition of eligibility. Any implementation of the option to place a photo on the EBT card must not impact the certification of households. An application will be considered complete with or without a photo and a case shall be certified regardless of the status of a photo in accordance with timeframes established under [7 CFR 273.2](#). If a State agency chooses to implement a voluntary photo EBT card policy, issuance shall not be impacted. If a State agency chooses to implement a mandatory photo EBT card policy, a State agency may not deny or terminate a household because a household member who is exempted by [paragraph \(f\)\(4\)](#) of this section does not comply with the requirement to place a photo on the EBT card.

(3) *Mandatory vs. voluntary.*

(i) State agencies shall have the option to implement a photo on EBT cards on a mandatory or voluntary basis. Regardless of whether the photo is mandatory or voluntary, the certification process must not be altered in order to facilitate photos, and clients must be informed that certification will not be impacted by whether or not a photo is on the card.

(ii) Under mandatory implementation, State agencies must exempt certain clients, as stated in [paragraph \(f\)\(4\)](#) of this section. State agencies must establish which member(s) of the household would be required to be photographed and the procedures that allow eligible nonexempt household members who do not agree to the photo to come into compliance at a later time.

(iii) Under voluntary implementation, clients must be clearly informed of the voluntary nature of the option. All applicant members of households, whether or not they are in an exempted category, must opt in to have a photo on their EBT card. States shall not require a photo be taken if the State is implementing a voluntary option.

(4) *Exemptions.* Under a mandatory implementation, the State agency must exempt, at a minimum, the elderly, the disabled, children under 18, homeless households, and victims of domestic violence. A victim of domestic violence shall be able to self-attest and cannot be required to submit documentation to prove domestic violence. The ability to self-attest must be applied equally regardless of if the victim is a female or male. Non-applicants cannot have a photo taken for an EBT card whether or not they desire to have their photo taken. A State agency may establish additional exempted categories.

(5) *Serving clients with hardship.* State agencies must have sufficient capacity to issue photo EBT cards and a process or procedure in place to address, on a case-by-case basis, household hardship situations as determined by the State agency so that such household benefits are not unduly withheld. Examples of hardship conditions include, but are not limited to: Illness, transportation difficulties, care of a household member, hardships due to residency in a rural area, prolonged severe weather, or work or training hours which prevent the household from being available during the hours that photos are taken in-office. These are households that do not already fall under the mandatory exemptions or other exemptions established by the State under [paragraph \(f\)\(4\)](#) of this section.

(6) *Issuance of photo EBT card.*

(i) States can require households to come in to be photographed, but cannot do so for the purposes of certification. The amount of time provided to households to come in and be photographed needs to be

sufficient and reasonable and be documented in the Implementation Plan as required in [paragraph \(f\)\(14\)](#) of this section.

(ii) Regardless of whether the State's photo EBT card policy is voluntary or mandatory, if a household meets expedited criteria, the State must issue the EBT card without a photo and provide the full benefit allotment to the entire household without delay. The State agency may require a nonexempt head of household member to comply at the next recertification.

(iii) Card issuance procedures for new SNAP households must ensure adherence to application processing standards as required at [7 CFR 273.2](#)(g) and (i) and benefit issuance standards at § 274.2(b).

(iv) State agencies shall not store photos that are collected in conjunction with its photo EBT card policy but are not placed on an EBT card.

(v) The process for issuing and activating photo EBT cards must not disrupt, inhibit or delay access to benefits nor cause a gap in access for ongoing benefits for eligible households.

(vi) Any card issued as part of the implementation of the photo EBT card option may not count against the household with respect to card replacement fees or the card replacement threshold defined in [§ 274.6\(b\)](#).