Recommendations

PREVENTing EBT CARD use at Restricted Locations

Executive Summary

To enforce the proper use of Electronic Benefits Transfer (EBT) cards to access Colorado cash benefits at federally restricted locations, the Colorado Departments of Human Services and Revenue sought input for enforceable remedies to prevent EBT misuse. In November 2014, the departments convened a diverse and broadly represented stakeholder group, including representatives from the restricted EBT access points, the banking industry, consumer advocates, and state agencies. Despite its diverse interests, the group collaborated and came to agreement on a number of key recommendations as a first step in preventing improper EBT access. In order to move the needle towards 100% compliance with EBT card usage, we recommend that the group continues to meet to lay out concrete action plans for implementing the recommendations.

As a first step, the group recommends the following, as described in the Recommendations section:

* *Policy Changes:* Consider modifying EBT access legislation to include marijuana retail outlets and adult entertainment venues; consider policy strategies to sanction repeat consumer and business offenders.
* *Consumer Awareness and Business Outreach:* The state will implement strategies both to notify EBT users of restricted access points and engage business owners to clearly declare restricted EBT access in restricted locations.
* *Vendor Contract Enhancements:* As the state solicits a new EBT vendor, expectations regarding the types of data, reports, and the physical cards to support enforcement will be set in the RFP and subsequent contract,
* *Invest in Data Infrastructure:* Create a data warehouse to facilitate cross-department/ cross-agency data sharing, monitoring, and oversight.

These recommendations strategically combine both short-term, proactive solutions to comply with federal mandates and legislation and a longer-term solution to enhance monitoring and enforcement efforts. Together, these recommendations create a solid foundation for the state to achieve and maintain compliance. Moreover, these strategies burden neither the consumers nor businesses with the onus of compliance, while ensuring that benefit recipients can access their benefits across the state, in all but restricted ATMs in Colorado.

introduction & Overview

When Congress extended the Temporary Assistance for Needy Families (TANF) block grant in 2012, the act prohibited TANF recipients from accessing their benefits via an Electronic Benefits Transfer (EBT) card withdrawal at ATMs or at the point-of-sale in liquor stores, casinos, and adult entertainment venues. States had until 2014 to develop and implement policies to prevent such use or face fiscal sanctions applied to the TANF block grant. More recently, the federal government has included retail stores that sell marijuana to the list of restricted locations.

In response to the 2012 law, Colorado changed its rules to require county workers to explain proper EBT use during intake interviews with applicants for cash assistance.[[1]](#footnote-1) This particular rule also states that cash assistance recipients may have their EBT cards revoked for “identified misuse.”[[2]](#footnote-2) Additionally, statute was adopted that specifically restricts EBT card use at gaming sites, stores that primarily sell firearms, and liquor stores.

Despite these measures, the state continues to receive reports that a small number of cash assistance recipients are using their EBT cards at restricted locations. In order to address this issue and avoid fiscal penalties, state agencies are actively pursuing solutions to improper EBT access in Colorado.

Group Discussion

During two stakeholder meetings, the group discussed the following issues:

*Problem*: A small number of Colorado recipients have accessed their cash benefits at locations that are restricted by federal law, including marijuana outlets. Furthermore, we do not know if the cash accessed at these restricted locations is used at these establishments, clearly counter to the intent of the assistance.

*Challenge*: There are multiple challenges in enforcing the ban on accessing cash benefits at ATMs in restricted locations in Colorado:

* + ATMs are not currently regulated by the state, precluding an effective enforcement mechanism to restrict access.
  + Many ATMs at these locations are mobile, further complicating enforcement because there is no reliable way to track where a machine is located.
  + Additionally, because these machines move, blocking Banking Identification Numbers (BINs), could restrict point-of-use access if a blocked machine moves from a restricted location to an allowable location without removing the BIN block.

*Options*: States around the country working to respond to the federal mandates have come up with several options to restrict EBT usage, including: blocking BINs (often through their vendor); education campaigns; and fines/fees/licensing penalties for EBT recipients, store owners and ATM owners who do not comply with federal law. As the group discovered, each option entails both benefits and drawbacks to consider. However, there is insufficient data to demonstrate the effectiveness of any one and/or all of these mechanisms in preventing EBT access in restricted locations. For instance, blocking BINs could significantly reduce EBT use in restricted locations; on the other hand, no one agency currently regulates or enforces ATM usage.

Recommendations

After carefully reviewing circumstances in Colorado and weighing the options, the Task Group identified five specific recommendations for consideration.

**1. Policy Changes**

* **Consider modifying legislation to restrict EBT card access at adult entertainment venues and retail and medical marijuana outlets**
* **Require Departments to develop rules to enforce unlawful EBT card access at restricted locations**

Policy changes will be helpful in two specific ways: changing legislation to match federal restrictions for EBT use and considering rules for enforcing unlawful use of EBT cards at restricted locations. Departments must consider promulgating rules to enforce sanctions. To this end, Departments must carefully seek stakeholder input and endorsement of any policy changes that penalize businesses. Moreover, any enforcement strategies will carefully balance the type of penalty and enforcement, specifically avoiding tying enforcement to business licenses.

*2. Consumer Awareness and Business Outreach*

**Notify consumers regarding EBT card restrictions**

* **Convene an advisory group comprised of consumers, advocates, and state staff to develop and refine written notifications about restricted locations and potential penalties for noncompliance.**
* **Develop a messaging campaign to increase consumer and business owner awareness about the restricted access points for EBT card withdrawals.**
* **Develop new training for county workers to understand the full scope of the issue of restricted access and potential penalties for non-compliance.**
* **Working in partnership, state and county leaders will develop strategies to track compliance at the local level.**
* **Continue to regularly convene the stakeholder group to evaluate and identify resources and agency structures needed to support actions**

Education campaigns are a proactive solution by preventing usage upfront, rather than reducing usage through punitive measures after the misuse has occurred. This approach increases awareness through enhanced communication, messaging, and consumer education on appropriate and inappropriate use of EBT cards and repercussions of noncompliance. An advisory group comprised of consumers, advocates, and state and local cash assistance programs staff will be responsible for implementing a widespread awareness campaign and developing a system to track compliance.

To be an effective solution, this option requires significant time investment of advisory group members, resources to craft effective messaging, appropriate technology to manage and share data, and enhanced communication strategies between local and state officials.

**Create signage for restricted ATM access at restricted businesses**

* **Convene business owners and representative groups (e.g. the Marijuana Industry Group (MIG) and Colorado Gaming Association) to identify solutions to restrict unlawful use of EBT cards**
* **Develop signage and other consumer notifications regarding restricted EBT card access at the location.**
* **Identify incentives for business owners to post the notifications.**
* **Seek fiscal and tactical commitments from businesses and business representative groups to support these efforts.**

Tasking business owners to identify solutions to prevent unlawful EBT card access is a proactive solution, preventing EBT usage, rather than *reducing* usage. Similar to the consumer-driven notifications in the previous recommendation, this recommendation involves businesses and their representative groups in creating solutions, including stickers on ATM machines advising consumers of restricted access via EBT cards, signs, posters, or other means.

State leaders will follow up on the interest expressed by the Marijuana Industry Group to pursue commitments from other businesses/interest groups to support these efforts. Once the signs/stickers/notices are created, business owners would be responsible for posting signage near and/or on the ATM machines on their premises.

1. **Build Enforcement Controls into the EBT Vendor Contract**

* **CDHS staff will identify enforcement controls in its upcoming new vendor RFP and contract to support the monitoring of unlawful EBT access.**
* **Consider data needs to monitor EBT access, including interfaces between the state and racing, liquor, marijuana, gaming, and adult entertainment venues.**
* **Identify acceptable timeframes for receiving data and reports.**
* **Consider requiring the EBT vendor to print warnings directly on the cards, similar to the Surgeon General’s warnings on cigarette packages, regarding prohibited uses and locations.**

Beginning in 2017, JP Morgan will no longer serve as a vendor for EBT transactions. Colorado will be soliciting a new EBT vendor which will provide an opportunity to identify additional EBT requirements, beyond the current vendor agreement, to support enforcement of unlawful EBT access. These requirements can be built into the RFP for the new vendor and translate into a vendor contract that aligns with federal law. The state will need to capitalize on the opportunity to build requirements into the contracting process, including interfacing data between the state and restricted locations, timeframes for data reports, and printing warnings about prohibited uses on EBT cards.

This option has the potential to help the state reach 100% compliance, presenting a proactive solution via warnings on the actual cards, as well as a positive solution to insufficient data which has limited effective monitoring and enforcement. However, implementation will not be immediate as the state will not be able to enter into another contract until 2016 at the earliest.

**4. Invest in Infrastructure**

**Invest in developing a data-sharing mechanism that allows for cross-department/cross-agency communication to facilitate EBT monitoring and enforcement. Identify costs of a functional data-sharing mechanism and potential investments to support the cost.**

An investment into the State’s data infrastructure, such as creating a data warehouse, would allow for cross-agency communication and promote improved monitoring and enforcement. One continual challenge is the inability of systems across divisions, departments or agencies, let alone with and among county partners to “talk” to each other. For instance, EBT access reports from the state to counties regarding EBT access violations are often dated, do not reflect real time issues or concerns, and are often hard to synthesize across departments.

While addressing these issues is outside the purview of this group, they reflect real and ongoing issues in addressing concerns such as EBT violations that cross multiple agencies and levels of government. Despite the initial upfront cost, improvements to the State’s data sharing capacity will also reduce costs long term through increased efficiencies. Because of the multiple benefits to a data sharing investment, the Task Group recommends the state explore how this type of data-sharing infrastructure can be developed and implemented in the future.

**SUMMARY & CONCLUSIONS**

The short-term, proactive nature of these recommendations forms a proactive solution to comply with the intent of federal legislation on restricted EBT usage. Combined with longer-term approaches, through a new EBT vendor contract that prevents misuse and strengthens fraud prevention capabilities, and improving the state’s data sharing capabilities, these recommendations form a thoughtful solution to a situation where previous voluntary access methods have failed. Moreover, the series of recommendations is a joint effort, avoiding placing the onus of the solution or enforcement on any one stakeholder group. These recommendations are preventative rather than punitive, and ultimately ensure that cash assistance recipients maintain access to their benefits.

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1. Dunaway, D. (July 11, 2014). Restricted Use of Electronic Benefits Transfer for Temporary Assistance for Needy Families (TANF)/Colorado Works and Adult Financial Cash Benefits. Rule-making #: 14-5-30-1. Office of Economic Security/Employment and Benefits Division. [↑](#footnote-ref-1)
2. Ibid. [↑](#footnote-ref-2)