

DRUG TESTING FOR FIA RECIPIENTS

**House Bill 4090 as enrolled
Public Act 17 of 1999
Sponsor: Rep. Lauren Hager**

**House Bill 4091 as enrolled
Public Act 9 of 1999
Sponsor: Rep. Jennifer Faunce**

**Third Analysis (6-30-99)
House Committee: Family and Children
Services
Senate Committee: Families, Mental
Health and Human Services**

THE APPARENT PROBLEM:

Michigan reformed its welfare system in 1995. The revisions place a renewed emphasis on moving recipients from public assistance into employment. (See "*Background Information*" for additional details). While the new program has been largely successful, none of the reforms have been able to overcome one persistent problem: for some people, the major barrier to employment is rooted in substance abuse. The problem is not unique to FIA recipients, of course, and many employers, including the State of Michigan, require drug tests as a condition of employment. However, the FIA would prefer to take steps to identify FIA recipients with drug problems, and has proposed a program, dubbed "*Project Zero Tolerance*," under which applicants for FIA assistance would have to submit to drug testing as a condition of eligibility. Once identified, according to the department, treatment could be provided. These provisions would ensure that individuals get help as a first step to finding employment. Consequently, legislation has been introduced to allow the FIA to screen prospective clients for substance abuse problems.

THE CONTENT OF THE BILLS:

House Bill 4090 would amend the Social Welfare Act (MCL 400.571) to permit the Family Independence Agency (FIA) to require substance abuse testing as a condition for eligibility for family independence assistance. Under the bill, the FIA would be required

to implement a pilot program on the testing in at least three counties, including random substance testing. House Bill 4091 would amend the act (MCL 400.57b) to specify that eligibility for family independence assistance would be subject to the drug testing provisions specified under House Bill 4090. The bills are tie-barred to each other.

Legislative Intent. House Bill 4090 would specify that "It is the intent of the legislature that a statewide program of substance abuse testing of Family Independence Assistance recipients, including random substance abuse testing, be implemented before April 1, 2003."

Pilot Program. House Bill 4090 would require that the FIA implement a pilot program to require substance abuse testing of applicants as a condition for benefit eligibility. The pilot program would be established in at least three counties, and would include random substance abuse testing. However, statewide implementation of the program could not start until all of the following had been completed:

- An evaluation of the pilot programs conducted by the department had been submitted to the legislature.
- The evaluation included, at least, the same information provided in the FIA annual report to the legislature, as required under the bill, as well as an analysis of the program.

- Six months had elapsed since the evaluation had been submitted to the legislature.

Substance Abuse Testing. An applicant who was eligible for FIA assistance, and who tested positive, would have to participate in a substance abuse testing assessment and comply with a substance abuse treatment plan. A failure to comply would be penalized in the same manner as a Work First Program violation. (Work First noncompliance penalties may be cumulative, and may include grant reduction, removal from the family independence group, and termination of assistance to the family. Penalties may not be imposed if a recipient demonstrates good cause for noncompliance). However, an applicant would not be considered as having tested positive until the same sample obtained for the original test had been retested to rule out a false positive by gas chromatography with mass spectrometry, gas chromatography, high performance liquid chromatography, or an equally -- or more -- specific test.

Reports to Legislature. The FIA would have to notify the Senate and House standing committees with jurisdiction over social welfare matters, and the Senate and House appropriations subcommittees that had jurisdiction over the FIA budget before implementing substance abuse testing. In addition, if a substance abuse testing program was implemented, the FIA would be required to provide these committees with an annual report on the program, indicating the number of individuals tested, the substances tested for, the results of the testing, the number of referrals for treatment, the costs of testing and treatment, the sanctions that had been imposed, and the percentage and number of households receiving assistance that included an individual who had tested positive for substance abuse and that also included an individual who had been named as a perpetrator in a child abuse or neglect case.

Exceptions. Applicants who were 65 years of age or older would not have to submit to drug testing.

BACKGROUND INFORMATION:

Under Public Act 223 of 1995, the welfare system in Michigan was reformed to comply with proposed changes in federal entitlement programs. Among other changes, the Department of Social Services (DSS) was redesignated the Family Independence Agency (FIA), and the old Aid to Families with Dependent Children (AFDC) program was replaced

with a new FIA program. Under this new program, applicants for assistance must attend orientation sessions conducted by the FIA and the Michigan Jobs Commission within one week after the FIA determines whether they are eligible for assistance. Applicants must then develop a social contract that defines their obligations to seek work or other productive activities. Each adult and child aged 16 or older who is not in school is then required to participate in the Work First employment and training program, and those who do not cooperate with Work First or any social contract requirement can be penalized. These changes were said at the time to represent "the end of welfare as it had existed for decades, and the beginning of an era in which the 'work ethic' would be emphasized."

FISCAL IMPLICATIONS:

The House Fiscal Agency (HFA) estimates that the bills would have an indeterminate impact on state funds for the following reasons:

- It is unclear how many individuals would be tested. Under the bills, the Family Independence Agency (FIA) would administer a pilot program in three counties, and it is anticipated that a district within each chosen county would be selected for participation.
- Individuals who tested positive would be referred to a local Central Diagnostics and Referral Services program, administered by the Department of Community Health (DCH), for assessment. Assessments would range from mild to intense outpatient treatment at a cost of up to \$2,000 each, to residential care treatment, which would incur a greater cost.

The HFA estimates that each drug test would cost approximately \$42, assuming that the FIA incurred no case management costs. The cost for treatment would generally be between \$1,000 and \$2,000 per case. A federal Health and Human Services Department (HHS) study indicates that about 15 percent of program participants will likely test positive. Therefore, based on a pilot program size of 1,000 individuals, the total cost would be between \$192 and \$342 per case. It is unclear at this time what percentage of these costs would be eligible for Medicaid reimbursement. (6-28-99)

The Senate Fiscal Agency (SFA) estimates that substance abuse tests costs would vary, from \$1.80 for a single panel of five drugs, to \$16.25 for a skin five drug test. According to the SFA, the number of

family independence recipients as of November, 1998 was approximately 287,400. Based on the assumption that one-third of recipients are adults, the SFA estimates that the cost for testing the adult caseload would range from \$172,300 (95,800 x \$1.80) to \$1.6 million (95,800 x \$16.25). This assumption does not take into account transportation costs for travel to sample collection sites in the pilot projects. (6-28-99)

According to a Family Independence Agency (FIA) analysis, the provisions of the bills would be accomplished using existing FIA and Department of Community Health (DCH) funds. The analysis also notes that, while costs will be incurred when substance abuse testing is implemented across the state, savings are also anticipated in reduced recidivism rates. (6-28-99)

ARGUMENTS:

For:

The problems resulting from substance abuse are well known. Substance abuse affects not only the abuser, but also the abuser's family, community, and the state, since many of these families require more help from the medical and the mental health communities than other families, and many ultimately come to the attention of the Children's Protective Services (CPS) and the justice system. However, the affect on the children of substance abusers is the problem that gives the greatest cause for concern. The children of parents who are addicted to drugs often exhibit aggressive behavior in school, or become depressed. In addition, drug addiction frequently triggers child abuse and neglect, and these children are more likely than other children to abuse drugs themselves. Often, the catalyst for welfare dependency and the barriers to self-sufficiency are rooted in substance abuse. Ultimately, substance abusers have trouble finding, and keeping, jobs.

The goal of "*Project Zero Tolerance*" is to help applicants for FIA assistance become independent of drugs and of welfare. In the interest of sampling a cross-section of the population, three sites would be selected for the proposed pilot programs: a rural county, a county with an urban population, and an FIA district in Wayne County. Applicants would be referred for drug testing by FIA employees, and, as long as each applicant complied with this requirement, applications would be completed and assistance cases

would remain open. In addition, current FIA clients would be selected randomly -- when their cases came up for an annual review, for example -- and asked to report to a designated site for testing.

The Department of Community Health (DCH) would assist in assessing individuals who tested positive, in determining the appropriate type of treatment, and in promoting substance abuse services. FIA clients would have to comply with treatment procedures in order to continue receiving benefits. However, the goal is not to punish substance abusers. Rather, it is to break down the barriers to employment and self-sufficiency for these individuals, and, through these means, help reduce the risks to their children.

For:

Employers are increasingly inclined to require drug tests before hiring. The reason is that drug abuse costs billions of dollars due to absenteeism, medical claims, lost productivity, and accidents. In an article on drugs in the workplace in the January 1999 issue of *Michigan Chamber of Commerce*, Steven J. Fishman, special labor counsel to the Michigan Chamber, writes "Crisis costs to American industry from drug abuse can be prevented only where employers identify employee drug users before the problem arises." Mr. Fishman identifies drug abuse as a "major social problem which continues to spill over into the workplace," and cites statistics which point out that a substance abusing employee has three times more absences, is 40 percent less productive, and is involved in four out of ten industrial fatalities and five out of ten industrial accidents.

Against:

Substance abuse screening should be part of a more comprehensive screening program and should be undertaken *only* if Family Independence Program recipients fail to comply with work requirements, according to written testimony presented to the House Committee on Family and Children Services from a nonprofit law firm that works with welfare recipients, among other clients. The law firm suggests that, rather than spend millions of dollars on testing for everyone, the state focus its resources on identifying and treating applicants and recipients who have shown they cannot hold a job because of substance abuse. Moreover, the firm points out that nearly 40 percent of FIA recipients are already employed, and more than 95 percent are complying fully with work requirements.

Response:

The FIA maintains that testing all new FIP recipients is better than testing only "for cause" (for recipients who failed to comply with work requirements) for the following reasons:

- A positive drug test would result in treatment.
- If the FIA were to test only "for cause," it is likely that the individual would already have failed a drug test with a potential employer, lost a job because of drugs, or been arrested.
- Testing "for cause" would give recipients the false hope that they might be able to hide their drug dependency.
- Testing "for cause" means that fewer people who need help will receive it.

Against:

The bills aspire to help individuals become self-sufficient through employment. However, substance abuse is not the only barrier to employment. Many people believe that alcohol abuse is a far more common problem for welfare recipients. In addition, statistics show that nearly half of adult welfare recipients never completed high school. Many more have learning disabilities, and some are mildly mentally retarded. It is unwise to spend state funds on drug testing until these problems are also identified and addressed.

Response:

It is generally acknowledged that alcohol abuse is a far greater problem than substance abuse -- for welfare recipients and for the public-at-large. However, since alcohol dissipates in the bloodstream quickly, it is difficult to test for alcohol abuse.

Against:

The bills would require that applicants for FIA assistance submit to drug testing as a condition of eligibility. Many believe that this provision singles out one segment of society -- the poor -- and subjects them to an invasion of privacy. It is argued that no one should have to give up the right to privacy to get government help.

Response:

In an analysis of the bills, the FIA contends that its staff are sensitive regarding individual rights to privacy, and points out that drug testing is currently required in CPS cases when the health and safety of a child is questioned. The department maintains that these cases are dealt with in strict confidentiality.

Against:

As written, House Bill 4090 is overly vague. The bill specifies that the FIA may require substance abuse testing as a condition for "Family Independence Assistance eligibility" This would indicate that substance abuse testing is to be required of applicants for *all* FIA assistance. However, during a public hearing before the House Committee on Family and Children Services, it was generally understood, and indicated several times during testimony, that the assistance referred to in the bill was Family Independence Program (FIP) assistance. (FIP replaced Aid to Families with Dependent Children [AFDC], and provides monthly cash assistance to families for subsistence needs.) Language is needed to clarify this. Otherwise, persons applying for assistance from other FIA programs, such as State Disability Assistance, or State Emergency Relief, would have to submit to drug testing.

In addition, House Bill 4090 fails to specify how the FIA will test applicants. For example, who will decide whether an applicant should be tested or not? What type of test will be conducted? Where will the testing be done? Will transportation to testing sites be available? Will hearings be held for those who test positive and want to appeal the decision? Will recipients be denied benefits if no treatment program is available in their county? What will happen to the children of applicants who refuse to be tested? What treatment will be provided for an applicant whose condition requires residential care if none is available? The FIA and the Department of Community Health should be required to promulgate rules to provide the answers to these questions.

Analyst: R. Young

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.