

SUSPICION-BASED SCREEN TESTING

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Senate 275 (Substitute H-1)
Sponsor: Sen. Joe Hune

House Bill 4118 (S-1) as passed by the Senate
Sponsor: Rep. Jeff Farrington

Senate Committee: Families, Seniors and Human Services
House Committee: Families, Children, and Seniors

Complete to 11-4-14

A SUMMARY OF SENATE BILL 275 AS REPORTED FROM HOUSE COMMITTEE AND HOUSE BILL 4118 AS PASSED BY THE SENATE

Senate Bill 275 is part of a two-bill package that would amend the Social Welfare Act to provide for a pilot program for suspicion-based substance abuse testing and screening as a condition of eligibility for the Family Independence Program. The other bill is House Bill 4118. HB 4118 passed the House in May of 2013 and was been returned to the House from the Senate in March 2014 as a substitute S-1.

As introduced, each bill was a separate stand-alone bill creating the pilot program; as amended, the two bills together create the program with interlocking provisions. The two bills are tie-barred to one another, meaning neither can take effect unless both are enacted.

House Bill 4118 (S-1) would require the Department of Human Services to administer a suspicion-based screening and testing pilot program in three or more counties selected by the Department, subject to state appropriation. For fiscal year 2014-15, the bill would appropriate \$500,000 to the DHS to implement and administer the pilot program.

Upon initial application and at annual redetermination, the DHS would have to screen FIP applicants and recipients for suspicion of substance abuse, using an empirically validated substance abuse screening tool. If the screening results for an applicant or recipient gave the DHS a reasonable suspicion to believe that the person had engaged in the use of a controlled substance in violation of state law, the person would have to take a substance abuse test.

An applicant or recipient who refused to take a substance abuse test would be ineligible for assistance but could reapply after six months. A person who reapplied would have to test negative for use of a controlled substance (or there would have to be a determination that the use was not in violation of state law if there was a positive test) in order to receive assistance. If the test results were negative, or if the results were positive but it

were determined that the use was not in violation of state law, the DHS would have to pay for the cost of the test.

If an applicant or recipient were a parent and had a dependent child in the FIP assistance group, and became ineligible for assistance under the bill, the dependent child would remain eligible for FIP assistance and an appropriate protective payee would have to be designated to receive FIP benefits on the child's behalf. The applicant or recipient could choose to designate another individual to receive the benefits on the child's behalf. That individual would have to be an immediate family member or, if one were not available or willing, an individual approved by the DHS.

Senate Bill 275 (H-1) would require the DHS to refer an applicant or recipient to department-designated community mental health entities the first time the individual tested positive for use of a controlled substance under the pilot program in violation of state law. The DHS would have to provide or continue to provide or continue FIP assistance to the individual who was otherwise eligible. The costs of administering the test would be deducted from the applicant's or recipient's FIP assistance payment after the redetermination. The DHS would terminate FIP assistance for individuals who either failed to participate in treatment offered by the CMH entities, or failed to submit to periodic substance abuse testing required by them.

An applicant or recipient who tested positive for use of a controlled substance in violation of state law a second or subsequent time would be ineligible for FIP assistance. An individual who reapplied would be required to test negative for use of a controlled substance in order to receive FIP assistance. The DHS could refer the applicant or recipient to the department-designated CMH entities for substance abuse treatment.

The pilot program would begin no later than October 1, 2015 and conclude no later than September 30, 2016.

The bill would define "department-designated community mental health entity" as that term is defined in the Mental Health Code (the CMH authority, CMH organization, CHM services program, county CMH agency, or CMH regional entity designated by the Department of Community Health to represent a region of CMH authorities, CMH organizations, CMH services programs, or county CMH agencies).

The bill contains the same provisions as in House Bill 4118 (S-1) regarding the designation of a payee to receive benefits on behalf of a dependent child if the parent became ineligible to receive assistance under the program.

Report to the Legislature

No later than 60 days after the conclusion of the pilot program, the DHS would have to report to the Legislature regarding the screening and testing program. The report would have to include at least all of the following: the number of individuals screened; the number of individuals screened for whom there was a reasonable suspicion of illegal use of a controlled substance; the number of individuals who consented to submitting to a

substance abuse test and the number who refused to submit to a test; the number of individuals who submitted to a substance abuse test who tested positive for use of a controlled substance; the number of individuals who submitted to a substance abuse test who tested negative for use of a controlled substance; the number of individuals who tested positive for use of a controlled substance, the number of individuals who tested positive for use of a controlled substance for a second or subsequent time; the cost incurred by the DHS in administering the program; the number of applicants and recipients who were referred to the department-designated CMH entities; and sanctions, if any, imposed on recipients as a result of the substance abuse testing.

Whether use is a violation of state law

For purposes of House Bill 4118 (S-1) and Senate Bill 275 (H-1), an applicant or recipient is an individual who is 18 years of age or older. Under the bill, "use of a controlled substance" would not include a recipient or applicant who has a prescription for the controlled substance marijuana as a qualifying patient who has been issued and possesses a registry identification card according to the Michigan Medical Marijuana Act (MCL 333.26421 et al.)

FISCAL IMPACT:

Senate Bill 275 and the tie-barred House Bill 4118 would create a one year pilot program. The gross annual fiscal impact of the pilot program would be a state cost from \$500,000 to \$750,000. The fiscal impact assumes the number of FIP cases that include an adult would be reduced by 1.8% to 3.5%, while the number of persons enrolled in a substance abuse treatment program provided through the Department of Community Health would increase by the same amount.

The Gerald R. Ford School of Public Policy at the University of Michigan conducted The Women's Employment Study (WES), which was a longitudinal survey of 750 Temporary Assistance for Needy Families (TANF) recipients in Michigan, from 1997 to 2003. WES examined the types of barriers to obtaining and retaining employment that TANF recipients face. One of the barriers surveyed was drug use, dependence, and abuse. WES, along with national surveys of TANF recipients, report 3.4% - 3.6% of TANF recipients have a drug dependence and/or abuse, with marijuana being the most prevalent drug.

WES also reported that 16% - 21% of TANF recipients used drugs during the past 12 months; however, it cannot be assumed that the substance abuse test will be positive (or that the substance abuse screening tool would identify the person as having a drug dependence and/or abuse). Urine drug tests can generally detect marijuana use within the past week and hard drug use within the past 2 days. So, many of the 16% - 21% of TANF recipients who have used drugs during the past 12 months would test negative, and some of the 3.4% - 3.6% of TANF recipients that have a drug dependence and/or abuse would also test negative.

From these data and factors, HFA assumes 10% of adults will be tested for substance abuse and from 1.8% to 3.5% of adults will test positive. An the adult who tests positive

would be referred to the regional substance abuse coordinating agency, increasing substance abuse program costs by an average of \$1,270 per case.

Senate Bill 275 could increase the number of administrative hearings from persons appealing a false positive drug test, and could also increase training costs. These costs should be minimal.

POSITIONS:

American Civil Liberties Union oppose the concept of the bill. (9-10-14)

Center for Civil Justice testified in opposition to the bill. (9-10-14)

Mental Health Association of Michigan opposes the bill. (9-10-14)

Michigan Community Action opposes the bill. (9-10-14)

Michigan Head Start Association opposes the bill. (9-10-14)

Michigan League for Public Policy opposes the bill. (9-10-14)

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■ 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.