

SUSPICION-BASED SCREENING/TESTING

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

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

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

Complete to 9-9-14

A SUMMARY OF SENATE BILL 275 AS PASSED BY THE SENATE 12-12-13

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. That bill 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 (S-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 in violation of state law. The DHS would have to provide or continue to provide 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 payment. 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 required 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 not to test positive for use of a controlled substance in violation of state law in order to receive FIP assistance. The DHS could refer the applicant or recipient to the department-designated CMH entities for substance abuse treatment.

If an applicant or recipient were referred to and participated in treatment, the DHS or any applicable health plan that the individual could be covered under would have to pay for that treatment.

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

By April 30, 2015, 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 with a determination that the use was in violation of state law; 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 with a determination that the use was not in violation of state law; the number of individuals who tested positive for use of a controlled substance with a determination that the use was in violation of state law 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.

Confidentiality

All information, interviews, reports, statements, memoranda, and substance abuse test results, written or otherwise, received by the DHS through a substance abuse screening or testing program required by the bill would be confidential communications subject to the privacy protections under the Health Insurance Portability and Accountability Act, and could not be used or received in evidence, obtained in discovery, or disclosed in any public or private proceedings, except in accordance with the bill or in determining eligibility under the Social Welfare Act.

Whether use is a violation of state law

For purposes of House Bill 4118 (S-1) and Senate Bill 275 (S-1), an applicant or recipient would have to be determined not to have used a controlled substance in violation of state law if one of the following were true: the individual had a valid, documented prescription (as defined in the Public Health Code) for that controlled substance; the individual tested positive for marijuana and was in possession of a registry identification card according to the Michigan Medical Marijuana Act; or the individual disputed a positive test result and a generally accepted confirmatory test was administered on the same sample previously tested and indicated a negative result for the presence of a controlled substance.

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 face¹. 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 drug².

WES also reported that 16% - 21% of TANF recipients used drugs during the past 12 months³; however, it cannot be assumed that the substance abuse test will be positive (or that the substance abuse screening tool would identify the person has 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.

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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.

¹ <http://www.fordschool.umich.edu/research/poverty/wes/>

² <http://www.fordschool.umich.edu/research/poverty/pdf/WES-SubstanceUse.pdf>

³ <http://www.fordschool.umich.edu/research/poverty/pdf/drugtest.pdf>