



Senate Fiscal Agency
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BILL ANALYSIS

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Senate Bill 275 (Substitute S-1 as passed by the Senate)
House Bill 4118 (Substitute S-1 as passed by the Senate)
Sponsor: Senator Joe Hune (S.B. 275)
Representative Jeff Farrington (H.B. 4118)
Senate Committee: Families, Seniors and Human Services
House Committee: Families, Children, and Seniors (H.B. 4118)

Date Completed: 12-12-14

RATIONALE

In 1996, the Federal government enacted the Personal Responsibility and Work Opportunity Reconciliation Act, which established the Temporary Assistance for Needy Families (TANF) program. The Act tasked states with designing programs to move families from government aid to financial independence. Further, the Act authorized states to test TANF recipients for use of controlled substances, and sanction recipients who test positive.

Michigan offers TANF benefits through the Family Independence Program (FIP), which provides temporary cash assistance to families. In 1999, Michigan began a pilot program of random drug testing in certain areas of the State. The program required applicants to pass a substance abuse test as a condition of receiving FIP benefits. Applicants who tested positive had to participate in substance abuse assessment and comply with a required substance abuse treatment plan. If an applicant failed or refused to take a test, or failed to comply with a treatment plan, without good cause, benefits were generally denied or terminated.

In 2000, a U.S. District Court found Michigan's pilot program unconstitutional (*Marchwinski v Howard*, 113 F. Supp. 2d 1134). The Court held that, in the absence of individualized suspicion, the State had not demonstrated a "special need" that satisfied the U.S. Constitution's Fourth Amendment protection against unreasonable searches. The Court found that the goals of TANF and FIP were generally to provide financial support to needy families and increase recipient independence. Since neither program was designed to advance a special need such as public safety, the State had not justified singling out FIP applicants and recipients for *suspicionless* drug testing. Ultimately, an equally divided panel of the U.S. Sixth Circuit Court of Appeals upheld the District Court's ruling.

Many people continue to believe that individuals should not receive public assistance if they use controlled substances illegally, and suggest that Michigan should implement a program of *suspicion-based* drug testing of FIP applicants and recipients.

CONTENT

The bills would amend the Social Welfare Act to require the Department of Human Services (DHS) to establish and administer a pilot program of suspicion-based substance abuse screening and testing for Family Independence Program applicants and recipients. Specifically, the bills would do the following:

- **Require the DHS to administer the pilot program in three or more counties.**
- **Appropriate \$500,000 to the DHS in fiscal year 2014-15 for this purpose.**

- **Require the DHS to screen FIP applicants and recipients for suspicion of substance abuse, using an empirically validated substance abuse screening tool.**
- **Require a person to take a substance abuse test if the screening results gave the DHS a reasonable suspicion to believe that he or she had used a controlled substance in violation of State law.**
- **Provide that an applicant or recipient would be ineligible for FIP assistance, but could reapply after six months, if he or she refused to take a substance abuse test.**
- **Require the DHS to refer an applicant or recipient to Department-designated community mental health (CMH) entities, and continue to provide FIP assistance, the first time he or she tested positive.**
- **Provide that an applicant or recipient would be ineligible for assistance, and allow the DHS to refer the individual to CMH entities, if he or she tested positive a second or subsequent time.**
- **Provide that a dependent child would continue to receive assistance if his or her parent became ineligible under the program, and require the designation of a protective payee to receive benefits on the child's behalf.**
- **Provide for the confidentiality of all information the DHS received through the program.**
- **Require the pilot program to conclude on March 31, 2015.**
- **Require the DHS, by April 30, 2015, to report to the Legislature on the program.**

The bills are tie-barred.

House Bill 4118 (S-1)

Subject to State appropriation, the bill would require the DHS to administer a suspicion-based screening and testing pilot program in three or more counties selected by the Department. 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. If the person reapplied, he or she 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 he or she tested positive, 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 his or her 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 an immediate family member were not available or he or she declined, the individual would have to be approved by the DHS.

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 marihuana and was in possession of a registry identification card according to the Michigan Medical Marihuana Act.
- 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.

Senate Bill 275 (S-1)

Consequences of Positive Test Results

The bill would require the DHS to refer an applicant or recipient to Department-designated community mental health entities if it were the first time the individual tested positive for use of a controlled substance and it were determined that he or she used the controlled substance in violation of State law. The DHS would have to provide or continue to provide FIP assistance to the individual, if he or she were otherwise eligible. The costs of administering the test would have to be deducted from the applicant's or recipient's FIP payment. The DHS would have to terminate FIP assistance for individuals who either failed to participate in treatment offered by the CMH entities, or failed submit to required periodic substance abuse testing required by them.

The second or subsequent time an applicant or recipient tested positive for use of a controlled substance and it was determined that he or she used the substance in violation of State law, he or she would be ineligible for FIP assistance. If the individual reapplied, he or she would be required not to test positive for use of a controlled substance with a determination that the use was 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 his or her 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.
- The number of individuals who refused to submit to a substance abuse 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.
- Sanctions, if any, that had been 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.

Proposed MCL 400.57z (S.B. 275)
Proposed MCL 400.57y (H.B. 4118)

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

Illegal drug use can prevent or destroy strong family relationships and erect a barrier to employment, thwarting the FIP goal of self-sufficiency and creating an unhealthy home environment. The bills would protect the children of applicant and recipient families by motivating parents to stay off of illegal drugs. The bills also would encourage those on drugs to make positive changes in their life by quitting drug use. The bills would require substance abuse treatment when a recipient or applicant tested positive for illegal drug use, and deny benefits only if the recipient or applicant refused substance abuse treatment or repeatedly failed drug tests.

The bills also would ensure that a dependent child was not denied public assistance if his or her parent had an ongoing illegal drug problem that resulted in ineligibility. If assistance were revoked or denied, the bills would require the designation of a third party to receive benefits on behalf of the child.

Supporting Argument

Providing public welfare to illegal drug users is unfair to the rest of society. If someone can afford illegal drugs, he or she does not need public assistance for food. Resources should go to those with the greatest needs. Also, many jobs require drug tests, so illegal drug use hampers entry into the job market. If someone chooses to limit his or her options for employment by using drugs illegally, the rest of society should not be held accountable for that choice. If successful entry into the job market can depend on drug tests, so should qualification for public assistance.

Public assistance should be a reciprocal obligation: society should provide assistance to the individual, but only if the individual engages in responsible and constructive behavior. Taxpayers deserve to know that their tax dollars are appropriately used for providing assistance, not enabling and subsidizing illegal drug use.

Response: Public assistance is designed to elevate those who need help to a point that they can be independent. Drug addiction is a disease, and someone's addiction could be the cause of his or her inability to be independent. An illegal drug user might make genuine attempts at treatment, which is responsible and constructive behavior, but fail.

Given the nature of drug addiction, it is a mistake to assume that because someone buys illegal drugs, he or she must be able to also afford food and other necessities. The power of drug addiction will cause people to forego basic necessities to their own detriment.

Opposing Argument

Requiring FIP applicants and recipients to be screened and potentially tested for illegal drug use would hurt those in need of assistance, because of the stigma associated with drug use and public assistance. It would have a negative effect on the self-esteem of family providers, and reinforce negative stereotypes about drug use and the poor. Further, the bills do not indicate the type, amount, or standards that would be required for training personnel who would administer the screening process. If the screening process lacked integrity, it could subject applicants and recipients to unnecessary drug tests, and thus, more stigma and humiliation.

Opposing Argument

The potential for an increased caseload for Child Protective Services (CPS) could outweigh any positive administrative or financial effects. The bills do not address whether CPS should be notified if a parent or guardian tested positive for illegal drug use. If the DHS reported all parents and guardians who failed, CPS could face a significant increase in its caseload.

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

The bills would appropriate \$500,000 to the Department of Human Services for it to establish a substance abuse screening and testing pilot program for FIP assistance in three counties. Any savings that could be realized due to the pilot program would depend on the number of FIP clients and applicants in each county, the percentage of these who tested positive, and the percentage of those who tested positive who would go to treatment and thus remain eligible for assistance.

Although the bills would not require the DHS to implement a statewide program, if that occurred the annual net costs/savings would depend on several unknown factors. Based on the experiences of other states in setting up similar programs, the costs to implement a drug testing program statewide could range between \$700,000 and \$3.4 million Gross. This estimate includes an empirically valid screening tool and the costs of the drug tests.

Caseload savings could be possible, but would depend on the implementation of the empirically valid testing tool, as well as the percentage of recipients who tested positive for drugs and successfully completed a substance abuse treatment program.

The bills would require the DHS to submit a report on the results of the pilot program, including actual costs and data on the caseload impacts, which would allow for a more precise estimate to implement a statewide program.

The bills would have no fiscal impact on local units of government.

The following is an analysis of a potential statewide, ongoing substance abuse screening and testing program.

Potential Savings Calculations

There are several possible scenarios in terms of projecting ongoing, annual savings estimates. The State could realize approximately \$0.8 million Gross/\$0.2 million GF/GP in caseload savings if the program were implemented statewide. The FIP program is funded with approximately 20.0% GF/GP and 80.0% Federal funding.

The bills, as passed by the Senate, would allow children to continue to receive FIP assistance if the head of household were removed from the caseload. Michigan's projected monthly FIP caseload consensus projection in FY 2013-14 is 44,400 and the projected average monthly payment is \$394.81 (or \$314.81 if the head of household were removed from the caseload). The average number of child-only FIP cases from January 2012 to June 2012 was 13,000, making the total projected number of cases that could be affected by a drug testing policy approximately 31,400. For every head of household that was removed from assistance for six months, the State

would save approximately \$480. For every case that was removed from assistance for 12 months, the State would save approximately \$960.

If the DHS were able to identify 5.0% of FIP clients as drug users (approximately 1,570 cases), this group would be referred to substance abuse treatment and would be able to remain on assistance assuming that the individuals maintained their eligibility requirements otherwise. The National Institute of Health estimates that between 40.0% and 60.0% of those treated for illegal drug use will relapse. If half of those who were referred to treatment again tested positive, the State would realize approximately \$0.8 million Gross/\$0.2 million GF/GP in caseload savings for 12 months.

The percentage of welfare recipients who use illegal drugs is similar to – and only slightly higher than – to the percentage of drug users among the rest of the general population. In 2011, the U.S. Department of Health and Human Services (HHS) issued a report on drug use among welfare recipients that consolidated data from several studies. According to the HHS, most of these studies found that between 5.0% and 10.0% of welfare recipients abuse illegal drugs. Similarly, in 1999, Michigan's pilot program found that 10.3% of FIP recipients tested positive for illicit drug use. Florida's 1999 suspicion-based pilot program found that a total of 5.1% of welfare applicants and recipients tested positive for illegal drug use over an 18-month period. If a program in Michigan followed the model of the pilot program that was introduced in Florida in 1999, it is possible that as many as 5.0% of the total FIP caseload would be identified as drug users.

Cost Calculations

The cost estimate of \$700,000 to \$3.4 million for a statewide program is based on information from a 1999 Florida pilot program and a program implemented in Missouri in 2012.

The 1999 pilot program in Florida estimated a cost of \$30 for each drug test and a cost of \$90 per test once staff costs and other program costs were added. These costs include both the drug test itself and administrative overhead, including the use of SASSI, an empirically validated screening tool. The baseline administrative costs are estimated at approximately \$60 per screened applicant. Treatment costs were not included. Adjusted for inflation, the total costs would increase to \$120, with \$40 going toward the drug test itself. If all applicants/recipients of FIP received the formal, empirically validated screening tool, the baseline administrative costs of \$80 would be applied to each case (approximately 31,400). The total baseline costs – excluding the costs of the drug test itself – would be approximately \$2.5 million.

While individuals who tested positive would be responsible for the cost of the test, the State would pay the costs of applicants and clients who tested negative or who showed a false positive. The costs to the State of Michigan to cover false positive drug tests would total approximately \$213,500 Gross. In the Florida pilot program, the screening tool referred 22.4% of the welfare caseload to take a drug test. Less than a quarter of those who were referred by the screening tool tested positive for drugs (or 5.1% of the total caseload and new applicants). If this 17% difference is applied to the adult FIP caseload, approximately 5,300 cases would be referred to take a test and would test negative.

Missouri's suspicion-based program was projected to cost up to \$2.6 million in FY 2012-13. The estimate includes the costs of increased staffing, administrative hearings, drug treatment, changes to electronic applications, and hiring contractors to administer the drug tests. Of this total, approximately \$1.9 million was set aside for substance abuse treatment and \$700,000 for administrative costs.

Most FIP recipients would be eligible for drug treatment services through Medicaid. A small percentage of FIP recipients might not have Medicaid coverage, however. Outpatient and residential treatment costs range between approximately \$700 and \$2,400 per person. The Department of Community Health currently prioritizes treatment for welfare recipients. It is not known whether the referral of FIP clients would result in increased costs and caseloads in the

substance abuse regional centers, or whether an influx of FIP recipients would simply reduce the number of treatment slots that are available to other clients.

Additional Unknown Factors

Potential annual savings and additional costs would be based on several unknown factors, some of which would be determined by departmental policy and others of which would be based on individual clients. Some of the key undetermined factors include: (1) Implementation of the screening tool and drug test. Factors include the accuracy of the tool, whether additional staff would have to be hired to administer the tool, and whether the drug tests were timed correctly so that they could detect an illegal substance. (2) The number of people who refused to take a test and would be ineligible for FIP. The results of Florida's 1999 pilot project showed that 21.0% of applicants and recipients refused to take the screening and therefore were not eligible for assistance. Arizona has found that a significant number of applicants declined to participate in the initial screening tool. If these precedents are a good indicator of what could be expected to take place in Michigan, the FIP caseload would be reduced significantly on the front end, as well.

Fiscal Analyst: Frances Carley

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.