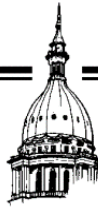




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BILL ANALYSIS



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Senate Bill 275 (as introduced 3-19-13)
Sponsor: Senator Joe Hune
Committee: Families, Seniors and Human Services

Date Completed: 6-12-13

CONTENT

The bill would amend the Social Welfare Act to do the following:

- Require the Department of Human Services (DHS) to establish and administer a program of substance abuse screening and testing based on reasonable suspicion for Family Independence Program (FIP) applicants and recipients.
- Require the DHS to use an empirically validated substance abuse screening tool.
- Require the screening and testing program to be conducted in three counties by July 1, 2014; in half the counties by July 1, 2015; and in all the counties by July 1, 2016.
- Require an applicant or recipient to take a substance abuse test if his or her screening results gave the DHS a reasonable suspicion to believe the person had illegally used a controlled substance.
- Require an applicant or recipient who tested positive the first time to participate in treatment and submit to periodic drug testing, in order to be eligible for FIP assistance.
- Allow an applicant or recipient who tested positive a second or subsequent time to choose between 1) six months of ineligibility for FIP assistance and 2) enrollment in a substance abuse treatment program, ineligibility during the program, and the opportunity to retake the test after 90 days.
- Make an applicant or recipient ineligible to reapply for FIP assistance for 12 months, if he or she tested positive after participating in a treatment program.
- Provide for six months of ineligibility if a person refused a test.
- Require a person to test negative for substance abuse if he or she had previously tested positive, or had refused a drug test, in order to receive FIP assistance.
- Require the DHS to report to the Legislature regarding the screening and testing program.
- Provide for the confidentiality of information and substance abuse test results received by the DHS.

Screening & Testing Program

The bill would require the DHS to establish and administer a program of substance abuse screening and testing based on reasonable suspicion for FIP applicants and recipients. An applicant or recipient would be an individual who was 18 or older who applied for or received FIP assistance. "Controlled substance" would refer to a drug, substance, or

immediate precursor included in Schedules 1 to 5 of controlled substances in the Public Health Code.

By July 1, 2014, the DHS would have to administer the screening and testing program in three or more counties, determined by the Department. By July 1, 2015, the DHS would have to administer the screening and testing in half of the counties in Michigan, determined by the Department. By July 1, 2016, the DHS would have to administer the screening and testing program in all of the counties in the State.

Upon initial application and at annual redeterminations, the DHP would have to screen FIP applicants and recipients for reasonable suspicion of substance abuse using an empirically validated substance abuse screening tool.

Results of Screening & Testing

If the results of the screening gave the DHS a reasonable suspicion to believe that an applicant or recipient had engaged in the illegal use of a controlled substance, the applicant or recipient would be required to take a substance abuse test.

If the applicant or recipient tested positive for illegal use of a controlled substance, and it were the first time he or she had tested positive, the applicant or recipient would be subject to provisions in Sections 57e(1)(e) and 57g in order to obtain or maintain FIP eligibility. (Section 57e requires a family receiving FIP assistance to execute a family self-sufficiency plan, which must include specific obligations. Subsection (1)(e) specifies the obligation to participate in substance abuse treatment and submit to periodic drug testing required by the treatment program, if a recipient fails the plan's compliance goals due to substance abuse. Section 57g prescribes penalties for a recipient who does not meet his or her family self-sufficiency plan requirements.)

If an applicant or recipient refused to take a substance abuse test, he or she would be ineligible for FIP assistance, but could reapply after six months. The applicant or recipient would have to test negative for illegal use of a controlled substance in order to receive FIP assistance.

If an applicant or recipient tested positive for illegal use of a controlled substance for a second or subsequent time, he or she could choose to proceed in one of the following ways. Under the first option, the applicant or recipient would be ineligible for FIP assistance but could reapply after six months. The applicant or recipient would have to test negative for illegal use of a controlled substance in order to receive FIP assistance. Alternatively, the applicant or recipient could choose to enroll in a substance abuse treatment program, and would be ineligible for FIP assistance during participation in the program. After 90 days and successful completion of the program, the applicant or recipient could retake the substance abuse test. If he or she tested negative and met all other eligibility requirements, he or she would be eligible to receive FIP assistance. If, after 90 days, the applicant or recipient were not following the treatment plan, he or she could not retake the substance abuse test for six months. If, at any time after participating in the treatment program, the applicant or recipient tested positive for illegal use of a controlled substance, he or she would remain ineligible for FIP assistance and could not reapply and retake a substance abuse test for 12 months.

An applicant or recipient who participated in a substance abuse program would have to sign a release authorizing the treatment counselor to communicate with the DHS regarding his or her progress in the program.

Report to the Legislature

Beginning March 1, 2015, and each subsequent year, the DHS would have to submit a report to the Legislature. 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 individual who refused to submit to a substance abuse test.
- The number of individuals who submitted to a substance abuse test who tested negative for illegal use of a controlled substance.
- The number of individuals who tested positive for illegal use of a controlled substance for a second or subsequent time.
- The number of individuals tested, the illegal controlled substances tested for, the results of the testing, and the number of referrals for treatment based on the testing results.
- Sanctions, if any, that had been imposed on recipients as a result of the screening and testing program.
- The cost incurred by the DHS in administering the program.

Confidentiality

All information, interviews, reports, statements, memoranda, and substance abuse test results received by the DHS through a substance abuse screening or testing program would be confidential communications subject to the privacy protections under the Federal Health Insurance Portability and Accountability Act (HIPAA). That information 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 a determination of eligibility under the Social Welfare Act.

Proposed MCL 400.57y

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

The bill would establish a substance abuse screening and testing requirement for FIP assistance, which would be phased in over a period of three years, beginning in FY 2013-14. The annual net costs/savings of implementing a statewide program would depend on several unknown factors.

It is not likely that the State would realize any savings during the first year of the phase-in period, as the program would be implemented in just three counties. The Department estimated that the initial costs to implement the program would total \$250,000.

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. Actual costs would be determined by departmental policy and implementation of the program.

In the third year and in subsequent years, when the program would be implemented statewide, caseload savings could be possible, but would depend on the implementation of the empirically valid testing tool. Savings due to caseload reductions and sanctions could range from \$1.9 million to \$3.8 million Gross annually.

Estimated Percent of Cash Assistance Recipients Who Use Illegal Drugs

The percentage of welfare recipients who use illegal drugs is similar to – only slightly higher than – the percentage of drug users among 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% and 10% of welfare recipients abuse illegal drugs.¹ Similarly, in 1999, a Michigan pilot program found that 10.3% of FIP recipients tested positive for illicit drug use.² 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.³ 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% of the total FIP caseload would be identified as drug abusers and would therefore be subject to sanctions for three to 12 months, which would result in caseload savings.⁴

Potential Savings Calculations

There are several possible scenarios in terms of projecting ongoing, annual savings estimates (not including the phase-in period). The FIP program is funded with approximately 20% GF/GP and 80% Federal funding.

Michigan's projected monthly FIP caseload in FY 2013-14 is 44,400 and the projected average monthly payment is \$394.81. 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 case that was removed from assistance for three months, the State would save approximately \$1,200. For every case removed from assistance for 12 months, the State would save approximately \$4,700.

If the DHS were able to identify 5.0% of FIP clients as drug abusers, and the entire case were removed from assistance for three months, the State would reduce caseload costs by approximately \$1.9 million Gross/\$379,300 GF/GP annually. In a scenario where costs were as high as \$3.4 million, the State would have to remove approximately 5.0% of the current FIP caseload and new applicants from assistance for six months, in order to essentially break even. If the costs were as low as \$700,000, the State would have to remove less than 2.0% of the caseload and new applicants from FIP assistance for three months in order to begin to realize savings.

Cost Calculations

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

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.⁵ 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 assistance received the formal, empirically validated screening tool, the baseline administrative costs of \$80 would be applied to each case

¹ *Office of the Assistant Secretary for Planning (ASPE), U.S. Department of Human Services, "Drug Testing Welfare Recipients: Recent Proposals and Continuing Controversies", October 2011.*

² Information provided by the Michigan Department of Human Services.

³ Crew, Robert E. PhD, and Davis, Belinda Creel, PhD. Assessing the Effects of Substance Abuse Among Applicants for TANF Benefits: The Outcome of a Demonstration Project in Florida. *Journal of Health & Social Policy*, Vol. 17(1) 2003.

⁴ When Florida implemented a statewide suspicionless drug testing program in 2011, just 2.6% of applicants were found to be using illegal drugs. Neither Florida's 2011 program nor Missouri's model remove children from assistance if the adult head of household tested positive for drugs. These programs, therefore, did not result in caseload savings.

⁵ U.S. Department of Human Services, October 2011.

(approximately 31,400 in FY 2013-14). The total baseline costs – excluding the costs of the drug test itself – would be approximately \$2.5 million. 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 actually tested positive for drugs (or 5.1% of the total caseload and new applicants).⁶ If this 22.4% referral estimate is applied to the adult FIP caseload, the estimated costs of a drug test would total \$280,000.

Additionally, the State of Missouri provides an example for cost comparison. 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 needs, administrative hearings, drug treatment, changes to electronic applications, and hiring contractors to administer the drug tests.⁷ Of this total, approximately \$1.9 million was set aside for substance abuse treatment and \$700,000 for administrative costs. As Senate Bill 275 does not address substance abuse treatment, only the estimated costs for administrative expenses are used for comparison.

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 the actions of FIP clients. Some of the key undetermined factors are as follows: (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 became ineligible for FIP. The results of Florida's 1999 pilot project showed that 21% of applicants and recipients refused to take the screening and therefore were not eligible for assistance.⁸ Arizona has also found that a significant number of applicants decline to take the screening. If these precedents are a good indicator of what could be expected to take place in Michigan, the FIP caseload would be reduced significantly. (3) The number of people who successfully completed a treatment program and were able to return to assistance. The National Institute of Health estimates that between 40.0% and 60.0% of those treated for illegal drug use will relapse, while the others will have renewed eligibility.⁹ (4) Medicaid coverage of most FIP recipients, who could receive drug treatment services this way. A small percentage of FIP recipients might not have Medicaid coverage, however, in which case outpatient and residential costs would range between approximately \$700 and \$2,400 per person.¹⁰

Conclusion

The actual costs and savings of implementing the bill would depend on several unknown factors. Therefore, the estimates in this analysis are based on a few key assumptions with the understanding that these factors would vary with the departmental policies and the accuracy of the substance abuse screening tool and drug test.

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

⁶ Crew and Davis, 2003.

⁷ U.S. Department of Human Services, October 2011.

⁸ Crew and Davis, 2003.

⁹ National Institute of Health, "Relapse Rates are Similar for Drug Addiction and Other Chronic Illnesses", 2008. Graph retrieved on 7/16/12: <http://www.drugabuse.gov/publications/addiction-science/relapse/relapse-rates-drug-addiction-are-similar-to-those-other-well-characterized-chronic-ill>.

¹⁰ FY 2010-11 Substance Abuse Annual Report, provided by the Department of Community Health.

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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.