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BILL ANALYSIS



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Senate Bill 904 (Substitute S-5 as reported)
House Bill 5223 (Substitute S-3 as reported)
Sponsor: Senator Joe Hune (S.B. 904)
Representative Jeff Farrington (H.B. 5223)
Senate Committee: Families, Seniors and Human Services
House Committee: Families, Children, and Seniors (H.B. 5223)

CONTENT

House Bill 5223 (S-3) 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 screening and testing program to be conducted first in three counties by July 1, 2013; in half the counties by July 1, 2014; and in all counties by July 1, 2015.
- Require the DHS to screen FIP applicants and recipients, upon initial application and at annual redetermination, for reasonable suspicion of substance abuse, using an empirically validated substance abuse screening tool.
- Require a FIP applicant or recipient to take a substance abuse test if the screening results gave the DHS a reasonable suspicion to believe he or she had engaged in the illegal use of a controlled substance.
- Specify that an applicant or recipient who tested positive for the first time would be subject to provisions of the Act pertaining to compliance with a family self-sufficiency plan, including participating in a substance abuse treatment program and submitting to periodic drug testing required by the program.
- Make an applicant or recipient ineligible for FIP assistance, if her or she refused to take a drug test, but allow him or her to reapply after six months.
- Require an applicant or recipient to test negative in order to receive FIP assistance, if he or she reapplied for FIP assistance after testing positive or refusing to take a drug test.

Senate Bill 904 (S-5) would amend the Social Welfare Act to specify that if an applicant or recipient tested positive for illegal use of a controlled substance, and it were his or her second or a subsequent positive test, he or she would be ineligible for FIP assistance, but could reapply after six months, subject to another required screening. 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 treatment program, the applicant or recipient could retake the substance abuse test. If the person 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.

All information 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), and could not be used or received in evidence, obtained in discovery, or disclosed in any public or private proceeding, except in accordance with the bill or in an eligibility determination under the Act.

Beginning March 1, 2014, and each subsequent year, the DHS would have to report to the Legislature regarding the substance abuse screening and testing program.

Under both bills, the terms "applicant" and "recipient" would mean an individual who is at least 18 years of age who applies for or receives FIP assistance, as applicable.

"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.

The bills are tie-barred.

Proposed MCL 400.57z (S.B. 904)
Proposed MCL 400.57y (H.B. 5223)

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

The bills would establish a substance abuse screening and testing requirement for FIP, which would be phased in over a period of three years, beginning in FY 2012-13. The annual net costs/savings of implementing a statewide program would depend on several unknown factors.

There is not enough information at this time to determine the costs of the first and second year phase-in of the pilot program. Based on the experiences of other states in setting up similar programs, however, the costs to implement a drug testing program statewide could range between \$700,000 and \$3.4 million. This estimate includes an empirically valid screening tool, but not substance abuse treatment for those who are uninsured. Actual costs would be determined by departmental policy and implementation of the program.

It is not likely that the State would realize any savings during the first year of the phase-in period. Clients who tested positive on their first drug test would be able to continue receiving FIP for one year until their case went through the annual eligibility redetermination process. The test would likely deter some potential clients from applying for assistance – if the pilot were implemented in just three counties, there would be a minimal impact, however. During the second year of the phase-in, a small percentage of those who had tested positive during the first phase would again test positive and would not be eligible for assistance. The State also could realize savings due to new applicants who refused to take the test, which would reduce the caseload. In the third and subsequent years, when the program would be implemented statewide, caseload savings could be possible, but would depend on the factors discussed below.

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

Unknown Factors That Would Determine Savings. Potential annual savings would be based on several unknown factors, some determined by departmental policy and others based on the actions of FIP clients. Some of the key undetermined factors are: (1) Whether children in households where an adult tested positive for drugs in a second or subsequent test would

continue to receive benefits. If children continued to receive benefits, there would be little to no impact on the FIP caseload and the savings would be minimal, which was the case with Florida's 2011 program and is projected to be the case with Missouri's new program. (2) The number of people who would refuse to take a test and be ineligible for FIP. (3) The number of people who would successfully complete a treatment program and be able to return to assistance. The National Institutes of Health estimates that between 40% and 60% of those treated for illegal drug use will relapse, while the others will have renewed eligibility. (4) How the screening tool and drug test would be implemented. 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.

The State of Florida provides an example of the variation and possible outcomes, as the state has implemented two different programs in the past 13 years. 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 could therefore lose their benefits for six to 12 months, which would result in caseload savings. On the other hand, when Florida implemented a statewide suspicionless drug testing program in 2011, just 2.6% of applicants were found to be using illegal drugs. One of the differences in program implementation is that the state's 2011 program targeted only new applicants and re-applicants, meaning that the regular caseload of approximately 50,000 families was not tested or affected by the policy. Additionally, Florida's 2011 program did not eliminate benefits for children of households where the adult recipient was found to be a drug user. Rather, the program allowed the adult to designate another adult to receive benefits on behalf of the children. Savings were therefore minimal under this program model. Similarly, Missouri's model also allows children in households with a drug abusing adult to continue to receive cash assistance. As such, Missouri has calculated only minimal savings for reduced monthly payments, because the model does not eliminate cases altogether.

Caseload Savings: Cash Assistance Recipients Using 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 rest of the general population. In 2011, the U.S. Department of Health and Human Services (HHS) issued a report on drug testing of welfare recipients. The authors had reviewed several research studies on the frequency of drug use among welfare recipients. According to the HHS, most studies have found that between 5% and 10% of welfare recipients abuse illegal drugs. Similarly, in 1999, a pilot program in Michigan 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.

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 FY 2012-13 Caseload Consensus projected that the average monthly FIP caseload will be 53,298 and the average monthly payment will be \$397. The average number of child-only FIP cases from June 2010 to June 2012 was 15,200, making the total projected number of cases that could be affected by a drug testing policy, 38,098. For every case removed from assistance for six months, the State would save approximately \$2,400. For every case removed from assistance for 12 months, the State would save approximately \$4,800. If the children who are part of the regular cash assistance caseload could retain benefits when the head of household was removed from assistance due to drug use, however, the State would incur no more than minimal savings due to reduced payments.

Depending on how the bills would be implemented, the DHS could identify anywhere from less than 1% to 10% of FIP clients as drug abusers. If 5% of the clients were identified as drug users and their entire case were removed from assistance for six months, the State would reduce caseload costs by approximately \$4.6 million Gross/\$914,400 GF/GP annually. If the annual costs to maintain a drug testing program were as high as \$3.4 million, this scenario still could result in approximately \$1.2 million net savings. In order to break even under a scenario where costs were \$3.4 million, the State would have to remove approximately 3.8% of the current FIP caseload and new applicants from assistance for six months, or 1.9% for 12 months. If the costs were as low as \$700,000, the State would have to remove less than 1% of the caseload and new applicants from FIP for six months in order to begin to realize savings.

These figures do not account for clients who would return to assistance in 90 days after having completed a substance abuse treatment program. Also not included are calculations for new applicants or existing clients who refused to take the screening or drug test and therefore would not be eligible for assistance. These factors could have a significant impact on the potential base caseload savings, however, if the program were designed to remove entire cases from assistance for a period of six to 12 months.

Potential Costs 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. 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 38,098 in FY 2012-13). The total baseline costs – excluding the costs of the drug test itself – would be approximately \$3.0 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 referred actually tested positive for drugs (or 5.1% of the total caseload and new applicants). If this 22.4% referral estimate were applied to the adult FIP caseload, the estimated costs of a drug test would total \$341,360.

Additionally, 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. As Senate Bill 904 (S-5) and House Bill 5223 (S-3) do not address substance abuse treatment, only the estimated costs for administrative expenses are used for comparison.

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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.