



Senate Fiscal Agency
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BILL ANALYSIS



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House Bill 5223 (Substitute H-1 as passed by the House)
Sponsor: Representative Jeff Farrington
House Committee: Families, Children, and Seniors
Senate Committee: Families, Seniors and Human Services

Date Completed: 6-25-12

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 suspicion-based substance abuse screening and testing for Family Independence Program (FIP) applicants and recipients.**
- **Require the screening and testing program to be conducted first in three counties by January 1, 2013; in half the counties by January 1, 2014; and in all the counties by January 1, 2015.**
- **Require an applicant or recipient to take a substance abuse test if his or her screening results gave the DHS a reasonable suspicion of the use of a controlled substance.**
- **Allow an applicant or recipient who tested positive for illegal drug use to choose between six months of ineligibility for FIP assistance or 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 or refused a drug test after previously testing positive, or if he or she tested positive while in a treatment program.**
- **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 cost of a substance abuse test to be deducted from the first FIP payment to an applicant or recipient who tested negative.**
- **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 suspicion-based substance abuse screening and testing for FIP applicants and recipients. For purposes of the bill, an applicant or recipient would be an individual who was 18 or older. "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 January 1, 2013, the DHS would have to administer the screening and testing for FIP applicants and recipients in three or more counties. The Department would have to determine which counties would begin the initial administration of the required screening and testing. By January 1, 2014, the DHS would have to administer the screening and testing for FIP applicants and recipients in half of the counties in Michigan. The Department would have to determine which counties would be in the program on that date. By January 1, 2015, the DHS would have to administer the screening and testing program in all of the counties in the State.

The DHS would have to administer suspicion-based substance abuse screening and testing by doing either of the following:

- Developing and administering a substance abuse survey that was based upon initial application for FIP applicants and at annual redetermination for FIP recipients.
- Screening FIP applicants and recipients for suspicion of substance abuse using an empirically validated substance abuse screening tool, upon initial application and at annual redetermination.

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 person refused, 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.

If an applicant or recipient tested positive for illegal use of a controlled substance, 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, an applicant or recipient who tested positive could choose to enroll in a substance abuse treatment program. During participation in the program, the applicant or recipient would be ineligible to receive FIP assistance. After 90 days, upon approval from the DHS, 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 to receive 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.

If an applicant tested negative for illegal use of a controlled substance and met all other eligibility requirements for FIP, the cost of administering the substance abuse test to the applicant would have to be deducted from his or her first FIP payment. If a recipient tested negative and met all other eligibility requirements for FIP at an annual redetermination by the DHS, the cost of administering the substance abuse test to the recipient would have to be deducted from his or her first FIP payment after the annual redetermination.

If, upon reapplying for FIP assistance, an applicant or recipient who previously tested positive, tested positive again or refused to take a subsequent substance abuse test, the applicant or recipient would be ineligible for FIP benefits for 12 months.

Report to the Legislature

Before implementing the program to half of the State's counties, and annually after the program was fully implemented, 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 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 400.57v

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

The substance abuse screening and testing requirement would be phased in over a period of three years, beginning in FY 2012-13. In the first year, the State could realize maximum savings of up to \$221,500 Gross with negligible costs. In the second year, with the expansion of the program to half of the counties, maximum savings could be as much as \$2.9 million Gross with negligible costs. In the third year, with the program fully implemented throughout the State, the maximum savings could be as much as \$6.0 million Gross with associated costs of \$149,800. Ongoing costs and savings would be determined by future caseloads.

This analysis assumes that the costs to the State to implement the suspicion-based drug testing as described in the bill would be \$60 per person, and the costs to the client required to take the drug test itself and who tested negative would be approximately \$30. These costs include both the drug test itself and administrative overhead. In October 2011, the U.S. Department of Health and Human Services released a report that reviewed the estimated total costs of drug testing welfare recipients in 12 states.¹ The estimates varied significantly, ranging from \$92,487 to \$20.0 million. The variance was due, in part, to the types of assistance programs that were included, differences in caseload numbers, and the different types of expenses that were included in the assumptions. A pilot program in Florida in the early 2000s 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. More recently, an article published in 2005 from the Society for Human Resources Management reported that "testing an applicant or employee ranges from \$25 to \$44 for urinalysis... [while] hair follicle testing costs \$75 to \$150 per test", supporting the estimated cost of the drug test in the Florida pilot program. Under the bill, the client would be responsible for the cost of the test, or approximately 30% of the total expenses.

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.*

The actual costs to implement the bill would vary depending on departmental policies and other unknown factors. Modifying computer programs to include drug testing in eligibility also would be a likely expense. It is also probable that the number of cases that come before the Michigan Administrative Hearing System to contest removal from assistance would increase. Other indeterminate costs include the annual redetermination surveys and treatment referrals for clients who were found to be substance abusers.

Some of the more substantial drivers in terms of both costs and savings are unknown factors, as these would be determined by departmental policy. The substance abuse tests could be carried out by either a contracted service or handled in-house by the DHS. If the DHS elected to use an empirically-validated screening tool, expenses would include the purchase and proper administration of the tool, including the costs of training staff and time spent administering the tool.

This analysis assumes that potentially 7.5% of FIP clients in the counties where the suspicion-based drug testing requirement was in place would be screened, take a drug test, and be removed from assistance. This is a maximum estimate, however, as the actual number and percentage of clients who would be correctly identified as substance abusers through a screening tool and also test positive in a drug test likely would be much lower. While various real-life factors would affect this estimate, it serves to provide a starting point from which to gauge potential savings. According to a 2011 report from the U.S. Department of Health and Human Services, most estimates have found that between 5% and 10% of welfare recipients have substance abuse problems. These rates generally include only illicit drugs. The report also noted that "drug tests detect recent drug use, but provide no information about frequency of use, impairment, or treatment needs". For example, if a client is abusing a "hard" drug such as cocaine, a urinalysis would only be able to detect usage within the past two days. In other words, a habitual but not daily user could go undetected, skewing the projected percentage of clients who would be removed from assistance. Additionally, the number of "false positives", or nonabusers who would be required to take a test, is not known. Child-only cases would be exempt from screening and testing.

Potential savings are calculated by multiplying 7.5% of the projected FY 2012-13 and FY 2013-14 FIP caseload² (minus child-only cases) by the projected monthly cost for six months. In the first year, as many as 93 cases could be affected for savings of \$221,500 Gross (\$44,300 GF/GP). In the second year, approximately 1,230 cases could be removed from assistance for total savings over six months of \$2.9 million Gross (\$580,000 GF/GP). In year three, with the implementation of the screening and testing requirement throughout the State, as many as 2,496 cases could be affected annually for potential maximum savings of \$6.0 million Gross (\$1.2 million GF/GP). If a client were removed from assistance and participated in treatment, the client would be able to return to assistance after six months. An indeterminate number of cases would be able to requalify.

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.

Fiscal Analyst: Frances Carley

² FY 2014-15 caseload estimates are not yet available. For the purposes of this estimate, the FY 2013-14 caseload estimate is carried forward.

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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.