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BILL



ANALYSIS

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House Bill 5353

House Bill 5354

Sponsor: Representative Jack A. Horton (H.B. 5353)

Representative Alan L. Cropsey (H.B. 5354)

House Committee: Human Services

Senate Committee: Families, Mental Health and Human Services

Date Completed: 12-21-95

**PUBLIC ACT 223 of 1995****PUBLIC ACT 224 of 1995****SUMMARY OF HOUSE BILLS 5353 and 5354 as enrolled:**

**House Bill 5353** amended the Social Welfare Act to:

- Replace references to the "state department of social services" with references to the "family independence agency", and require the Agency to establish and administer the Family Independence Program, which would replace the current Aid to Dependent Children Program.
- Specify the eligibility criteria for the independence assistance program, including a requirement that a minor parent and his or her child live in an adult-supervised household.
- Require each family that receives family independence assistance to enter into a social contract outlining the family's responsibilities, including participation in a Work First employment and training program.
- Provide for exemptions from the Work First requirements for certain assistance recipients.
- Provide for the development of penalties for fraud or failure to comply with the social contract.
- Provide for the establishment of assistance pilot projects.
- Specify the types of rules, regulations, and policies that the Family Independence Agency may develop, and provide that policies necessary to administer the assistance programs will be exempt from statutory rule promulgation requirements for 12 months.
- Specify that the Social Welfare Act must be read in conjunction with the annual

appropriation act for the Family Independence Agency.

- Replace references to the "county department of social services" with references to the "county family independence agency", and change references to the "county social services board" to the "county family independence agency board".
- Repeal provisions of the Social Welfare Act that pertain to financial reports from aid recipients; employment skills and training for General Assistance recipients; aid to dependent children; the definition of "dependent child"; job placement services; and the social welfare training program.

**House Bill 5354** amended the Administrative Procedures Act to exempt from that Act's definition of "rule" certain policies and regulations developed by the Family Independence Agency.

The bills were tie-barred to each other, and will take effect on the 91st day following the Legislature's sine die adjournment (i.e., on March 28, 1996). Following is a more detailed description of each bill.

**House Bill 5353****Family Independence Program**

The Family Independence Agency must establish and administer the Family Independence Program to provide assistance to families who are trying to achieve independence. ("Family" is defined as one or more of the following: a household consisting of a child and either a parent or stepparent of the child, or a caretaker of the child;

a pregnant woman; or a parent of a child in foster care. "Child" means an individual who is not emancipated, who lives with a parent or caretaker, and who either is under the age of 18 or is aged 18 or 19, a full-time high school student, and reasonably expected to graduate from high school before the age of 20. "Family independence assistance" means financial assistance provided to a family under the Family Independence Program.)

The Agency must administer the Program to accomplish all of the following:

- Provide financial support to eligible families while they pursue self-improvement activities and try to become financially independent.
- Ensure that recipients who are minor parents live in adult-supervised households in order to reduce long-term dependence on financial assistance.
- Assist families in determining and overcoming the barriers preventing them from achieving financial independence.
- Ensure that families pursue other sources of support available to them.

("Minor parent" is defined as an individual under the age of 18 who is not emancipated under the emancipation of minors Act, and who is either the biological parent of a child living in the same household or a pregnant woman. "Adult-supervised household" means either the place of residence of a parent, stepparent, or legal guardian of a minor parent; or another living arrangement that is approved by the Family Independence Agency as a family setting that provides care and control of a minor parent and his or her child and supportive services including, but not limited to, counseling, guidance, or supervision. "Recipient" means an individual receiving family independence assistance.)

In order to ensure efficient, fair, and cost-effective administration of the Family Independence Program and to provide family independence assistance to families willing to work toward eventual self-sufficiency, the Agency must establish income and asset levels for eligibility; types of income and assets to be considered in making eligibility determinations; payment standards; composition of the program group and the family independence assistance group; program budgeting and accounting methods; and client reporting requirements. Further, the Agency must establish program goals consistent with

these requirements and report the goals to the Governor and the Legislature within six months of the bill's effective date. The Agency also must report biennially to the Governor and the Legislature on the progress made toward the goals.

("Payment standard" is defined as the standard upon which family independence program benefits are based if the family independence assistance group has no net income. "Program group" means a family and all those individuals living with a family whose income and assets are considered for purposes of determining financial eligibility for family independence assistance. "Family independence assistance group" means all those members of a program group who receive family independence assistance.)

#### Eligibility for Assistance Program

An individual will be eligible for family independence assistance if he or she meets all of the following requirements:

- Is a member of a family or a family independence assistance group.
- Is a member of a program group whose income and assets are less than the income and asset limits set by the Family Independence Agency.
- Is a United States citizen, a refugee, or a permanent resident alien.
- Is a resident of Michigan.
- Meets any other eligibility criteria required for the receipt of Federal or State funds or determined by the Family Independence Agency to be necessary for the accomplishment of the goals of the family independence program.

A minor parent and his or her child may not receive family independence assistance unless they live in an adult-supervised household. The family independence assistance must be paid on behalf of the minor parent and child to an adult in the household. Child care in conjunction with participation in education, employment readiness, training, or employment programs, approved by the Family Independence Agency, must be provided for the minor parent's child. The minor parent and child must live with the minor parent's parent, stepparent, or legal guardian unless the Family Independence Agency determines that there is good cause for not requiring the minor parent and child to live with a parent, stepparent, or legal guardian. The Agency must determine the

circumstances that constitute good cause, based on a parent's, stepparent's, or guardian's unavailability or unwillingness or on a reasonable belief that there is physical, sexual, or substance abuse or domestic violence occurring in the household, or other risk to the physical or emotional health or safety of the minor parent or child. If the Agency determines that there is good cause for not requiring a minor parent to live with a parent, stepparent, or legal guardian, the minor parent and child must live in another adult-supervised household. A local office director may waive this requirement, however, for a minor parent who is at least 17 years of age, attending secondary school full-time, and participating in a service plan of the Family Independence Agency or a teen parenting program, if moving would require the minor parent to change schools.

If a minor parent applies for family independence assistance, the Family Independence Agency must do all of the following:

- Inform the minor parent of the eligibility requirements and the circumstances under which there would be good cause for permitting the minor parent to live in an adult-supervised household other than the home of his or her parent or legal guardian.
- Complete a home visit and other appropriate investigation before requiring a minor parent to live with his or her parent, stepparent, or legal guardian.
- If applicable, assist the minor parent to find an adult-supervised household in which to live.

The Michigan Jobs Commission and the Family Independence Agency will have to conduct joint orientation sessions for family independence assistance applicants at least weekly. After the Family Independence Agency makes an initial determination that an adult or a child aged 16 or older, who is not attending elementary or secondary school full-time, might be eligible for family independence assistance, that individual must attend a joint orientation session as a condition of eligibility prior to receiving family independence assistance. After completing the orientation, the individual must develop the family's social contract with the Family Independence Agency. If all eligibility criteria are met, the Agency must provide family independence assistance to the family for up to two months.

Within two months after the orientation session, the Agency must review the individual's

compliance with the social contract. If the individual has failed to cooperate with Work First, the family will be ineligible for further family independence assistance. ("Work First" is defined as the program of employment and training administered by the Michigan Jobs Commission for applicants and recipients of family independence assistance.) If the individual has failed to cooperate with any other social contract requirement, the Agency must impose penalties as provided in the bill. If the individual is complying with the social contract, the Agency and the recipient must revise the social contract, if necessary, and the family independence assistance group will continue to receive family independence assistance as long as the recipients meet the family independence assistance program requirements.

The current Act specifies that for purposes of aid to dependent children and medical assistance under the Act, a resident of this State is a person who is living in the State voluntarily with the intention of making his or her home in this State and not for a temporary purpose or who, at the time of application, is living in this State, is not receiving assistance from another state, and entered the State with a job commitment or seeking employment in the State. The bill specifies that for purposes of the Family Independence Program and medical assistance under the Act, a resident of the State is a person who is living in this State voluntarily with the intention of making his or her home in this State and not for a temporary purpose and who is not receiving assistance from another state. For purposes of medical assistance, a resident of this State also includes a person and the dependents of a person who, at the time of application, is living in this State, is not receiving assistance from another state, and entered the State with a job commitment or seeking employment in this State.

The bill also deletes the provision that a child is a resident of this State if he or she is living in the State other than on a temporary basis.

#### Social Contract

The bill requires each family receiving family independence assistance to execute a social contract outlining the responsibilities of members of the family independence assistance group. The social contract must be developed jointly by the Family Independence Agency and the adult family members, and must identify compliance goals that are to be met by members of the group. The

social contract must reflect the individual needs and ability of the particular family, and must include at least all of the following:

- The obligation of each adult and each child aged 16 or older who is not attending elementary or secondary school full-time to participate in Work First unless exempt under the bill.
- The obligation of each minor parent who has not completed secondary school to attend school.
- The obligation of each adult to engage in at least 20 hours per week of employment, Work First activities, education or training, community service activities, or self-improvement activities.
- The obligation to cooperate in the establishment of paternity and the procurement of child support, if applicable.
- The obligation of a recipient who fails to comply with compliance goals due to substance abuse to participate in substance abuse treatment and submit to any periodic drug testing required by the treatment program.
- Any other obligation the Family Independence Agency determines is necessary to enable the family to achieve independence.

("Substance abuse" means that term as defined in the Public Health Code, i.e., the taking of alcohol or other drugs at dosages that place an individual's social, economic, psychological, and physical welfare in potential hazard or to the extent that an individual loses the power of self-control as a result of the use of alcohol or drugs, or while habitually under the influence of alcohol or drugs, endangers public health, morals, safety, or welfare, or a combination thereof. "Substance abuse treatment" means outpatient or inpatient services or participation in Alcoholics Anonymous or a similar program.)

Beginning six weeks after the birth of her child until the child is three months old, a mother may be exempted by the Agency from Work First to receive instruction in parenting, nutrition, and child development as fulfillment of her social contract obligation to engage in employment or other activities at least 20 hours a week.

The Agency must to monitor each family's compliance with the social contract. If the family fails to comply with the compliance goals set forth

in the social contract, the Agency must impose penalties.

The Agency must enter into an agreement with the Michigan Jobs Commission in order to facilitate the administration of Work First. The Agency must make information on the program available to the Legislature.

Except as otherwise exempted by the bill, every member of a family independence assistance group must be referred to and participate in Work First. If a recipient cooperates with Work First, but the Work First agency determines that a job is not available, the recipient may enroll in a program that is specifically job-related and of no more than two years' duration that is offered by a college or university, community college, State-licensed vocational or technical education program, or State-licensed proprietary school. The particular activities in which the recipient is required or authorized to participate, the number of hours of work required, and other details of Work First must be developed by the Michigan Jobs Commission and the Family Independence Agency and be specified in the recipient's social contract.

#### Exemptions from Work First

The following individuals will be exempt from participation in Work First:

- A child under the age of 16.
- A child aged 16 or older, or a minor parent, who is attending elementary or secondary school full-time.
- An individual who is working a minimum number of hours determined by the Family Independence Agency to be necessary to meet Federal requirements.
- The mother of a child under the age of three months.
- An individual aged 65 or older.
- A recipient of supplemental security income, social security disability, or medical assistance due to disability or blindness, or his or her spouse if the spouse is the full-time care giver recipient.
- An individual suffering from a physical or mental impairment that meets Federal supplemental security income disability standards, except that no minimum duration will be required.
- The spouse of an individual suffering from a physical or mental impairment that meets Federal social security standards who is the full-time care giver of that individual.

- A parent or caretaker of a child who is suffering from a physical or mental impairment that meets the Federal supplemental security income disability standards, except that no minimum duration will be required.

("Caretaker" is defined as an individual who is acting as parent for a child in the absence, or because of the disability, of the child's parent or stepparent and who is the child's legal guardian, grandparent, great grandparent, great-great grandparent, sibling, step sibling, aunt, great aunt, great-great aunt, uncle, great uncle, great-great uncle, nephew, niece, or first cousin, first cousin once removed, a spouse of any of these listed individuals, a parent of the putative father, or an unrelated individual aged 21 or older whose appointment as legal guardian of the child is pending.)

The Family Independence Agency also may grant a maximum 90-day temporary exemption from participation in Work First to an individual who is suffering from a documented short-term mental or physical illness, limitation, or disability that severely restricts his or her ability to participate in employment or training activities. An individual who has a documented mental or physical illness, limitation, or disability that does not severely restrict his or her ability to participate in employment or training activities will be required to participate in Work First at a medically permissible level.

An individual is not disabled for these purposes if substance abuse is a contributing factor material to the determination of disability.

#### Penalties

The Family Independence Agency must develop a system of penalties to be imposed if a recipient commits fraud or fails to comply with the compliance goals set forth in the family independence assistance group's social contract. The penalties may be cumulative and may include reduction of the grant, removal of an individual from the family independence assistance group, and termination of assistance to the family.

A penalty may not be imposed if the recipient demonstrates that there was good cause for the noncompliance. The Family Independence Agency must determine those circumstances that constitute good cause based on factors that are beyond the control of a recipient.

Recipients who are willing to participate in activities leading to self-sufficiency, but who require child care or transportation in order to participate, may not be penalized if the Agency determines that child care or transportation is not reasonably available or provided to them.

If the Agency determines that a recipient's failure to pay the child care provider from child care payments made to the recipient by the Agency constitutes money mismanagement, future child care payments must be paid directly to the child care provider.

#### County Agencies

The current Act specifies that the director, employees, and assistants of a county department must be appointed by the State Department of Social Services from among persons certified as qualified by the State Civil Service Commission. The county social services board must review the qualifications of and interview each applicant for the position of county social services director, who then must be appointed from among persons certified as eligible and recommended by the Department and the county social services board. The bill specifies that these appointment provisions will not apply under conditions of reduction in State work force. In such circumstances, administrative employment preference rules for bumping promulgated by the Michigan Civil Service Commission will apply.

#### Contracts

Subject to the State Constitution of 1963, the Family Independence Agency may contract with a private individual or agency to administer a program created under the Act or to perform a duty of the Agency. The Agency is prohibited from awarding contracts to specific organizations that have not been competitively bid unless the award is permissible under State contracting procedures.

#### Pilot Projects

In order to achieve a more efficient and effective use of funds for public assistance, to reduce dependency, or to improve the living conditions and increase the incomes of individuals receiving public assistance, the Agency may establish and conduct pilot projects in one or more county or district offices. The Agency also may apply different policies in the pilot programs than it applies in the rest of the county or district offices and may conduct the pilot projects as long as

necessary to produce a reasonable test of the policy being evaluated. Pilot projects must be consistent with principles and goals set forth in the Act.

#### Rules, Policies, and Regulations

Currently, the Act requires the Michigan Social Welfare Commission to adopt all rules and regulations governing the policies of the Department of Social Services. The Director, subject to such rules and regulations, is responsible for the executive duties that are assigned to him or her by the Commission or by law.

The bill deletes these provisions and specifies instead that the Family Independence Agency may promulgate all rules necessary or desirable for the administration of programs under the Act. Rules must be promulgated under the Administrative Procedures Act (APA). Beginning two years after the bill's effective date, if the Michigan Supreme Court rules that the provisions of the APA concerning the procedures for promulgating rules and the approval, disapproval and adoption of rules are unconstitutional and a statute requiring legislative review of the administrative rules is not enacted within 90 days of the ruling, these provisions concerning rule promulgation will not apply.

The bill also allows the Agency to develop regulations to implement the goals and principles of assistance programs created under the Act, including all standards and policies related to applicants and recipients that are necessary or desirable to administer the programs. The regulations will be effective and binding on all those affected by the assistance programs. Generally, regulations setting standards and policies necessary or desirable to administer the programs will be exempt from the rule promulgation requirements of the APA until the expiration of 12 months after the bill's effective date. When the 12-month period expires, the regulations will not be effective and binding unless processed as emergency rules or promulgated under the APA. These provisions, however, do not apply to standards and policies related to the providers of services who have a written contractual relationship or who are enrolled Medicaid providers with the Agency.

Further, the Agency may develop policies to establish income and asset limits, types of income and assets to be considered for eligibility, and

payment standards for assistance programs administered under the Social Welfare Act. The Agency also may develop policies to implement requirements mandated by Federal statute or regulations as a condition of receipt of Federal funds; the policies will be effective and binding on all those affected by the programs. The policies will be exempt from the rule promulgation requirements of the APA. At least 30 days before the policies are implemented, however, they must be submitted to the Senate and House of Representatives committees with oversight of human services.

All rules, regulations, and policies established by the Agency must to be in writing, be provided to the Legislature, and be made available for inspection by any member of the public at all offices of the Agency during regular business hours.

Until the expiration of 12 months after the bill's effective date, a bipartisan task force of legislators appointed in the same manner as members are appointed to standing committees of the Legislature must meet regularly with the Agency to review proposed policies and regulations for the Family Independence Program. Meetings of the bipartisan task force will be subject to the Open Meetings Act.

#### Appropriations

The bill specifies that the Social Welfare Act must be read in conjunction with the annual appropriation act appropriating funds for the Family Independence Agency for each fiscal year. The annual appropriation act must be considered as a time-limited addendum to the Act. Further, a program created in or authorized under the Act is subject to the annual appropriation of funds. The inclusion of a program in the Act does not create an entitlement to that program, and the Family Independence Agency is not required to operate a program unless the Legislature appropriates funds for it.

#### Administrative Unit

The bill allows the Director of the Family Independence Agency to organize two counties into a single administrative unit for purposes of administrative efficiency. The director of the single administrative unit must be appointed by the Family Independence Agency from among persons certified as eligible and recommended by the Family Independence Agency and by all of the

affected county boards. If the affected county boards are unable to agree on recommended candidates within three months after being notified of a vacancy, the Agency must appoint the director of the single administrative unit from among persons certified as eligible and recommended by the Agency and by one or more of the affected county boards.

#### **House Bill 5354**

The bill amended the Administrative Procedures Act to exempt from the definition of "rule":

- A policy developed by the Family Independence Agency setting income and asset limits, types of income and assets to be considered for eligibility, and payment standards for administration of assistance programs under the Social Welfare Act.
- A policy developed by the Family Independence Agency to implement requirements that are mandated by Federal statute or regulations as a condition of receiving Federal funds.
- A regulation issued by the Family Independence Agency setting standards and policies for the administration of programs under the Social Welfare Act. This exemption will expire 12 months after the bill's effective date, after which the regulation will not be binding and effective unless it is processed as an emergency rule or is promulgated according to the APA. This limited exemption does not apply to the policies specifically exempted by the bill.

MCL 400.1 et al. (H.B. 5353)  
MCL 24.207 (H.B. 5354)

Legislative Analyst: L. Burghardt

#### **FISCAL IMPACT**

The contents of these bills, in and of themselves, do not lend themselves to a fiscal impact assessment. Due to the broad nature of the language, theoretically, the Department could institute either a much more costly or less costly program. Pragmatically, public testimony indicates that the Family Independence Program will be a codification and continuation of the welfare policies that have been in effect for the last few years; i.e., relating Work First and the social contract to the receipt of assistance. As such, the Senate Fiscal Agency estimates a continuation of the savings resulting from the decline in assistance caseload,

which is already included in the Department of Social Services fiscal year 1995-96 budget, for the near future.

Fiscal Analyst: J. Walker

#### **S9596\S5353ES**

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.