

DRUG TESTING FOR FIA RECIPIENTS

House Bill 4090 (Substitute H-1)

Sponsor: Rep. Lauren Hager

House Bill 4091 as introduced

Sponsor: Rep. Jennifer Faunce

First Analysis (2-4-99)

Committee: Family and Children Services

THE APPARENT PROBLEM:

Michigan reformed its welfare system in 1995. (See "*Background Information*" for additional details). While the new program has been largely successful, none of the reforms have been able to overcome one persistent problem: for some people, the major barrier to employment is rooted in substance abuse. The problem is not unique to FIA recipients, of course, and many employers, including the State of Michigan, require drug tests as a condition of employment. However, the FIA maintains that steps should be taken to identify FIA recipients with drug problems, and has proposed a program, dubbed "*Project Zero Tolerance*," under which applicants for FIA assistance would be advised that they would have to submit to drug testing as a condition of eligibility. Once identified, according to the department, treatment could be provided. These provisions would ensure that individuals get help as a first step to finding employment. Consequently, legislation has been introduced to allow the FIA to screen prospective clients for substance abuse problems.

THE CONTENT OF THE BILLS:

The bills would amend the Social Welfare Act to allow the Family Independence Agency (FIA) to require substance abuse testing as a condition for benefit eligibility. The bills are tie-barred to each other.

House Bill 4090 (MCL 400.571) would specify that, if the FIA implemented substance abuse testing, a person applying for FIA assistance who tested positive would have to participate in a substance abuse testing assessment and comply with a substance abuse treatment plan. However, before implementing substance abuse testing, the FIA would have to notify the Senate and House standing committees with jurisdiction over social welfare matters, and the Senate

and House appropriations subcommittees that had jurisdiction over the FIA budget. In addition, if a substance abuse testing program was implemented, the FIA would be required to provide these committees with an annual report on the program, indicating the number of individuals tested, the substances tested for, the results of the testing, the number of referrals for treatment, the costs of testing and treatment, the sanctions that had been imposed, and the percentage and number of households receiving assistance that include an individual who had tested positive for substance abuse and that also include an individual who had been named as a perpetrator of child abuse or neglect.

House Bill 4091 (MCL 400.57b). The bill would amend the act to specify that eligibility for family independence assistance would be subject to the drug testing provisions specified under House Bill 4090.

BACKGROUND INFORMATION:

Under Public Act 223 of 1995, the welfare system in Michigan was reformed to comply with proposed changes in federal entitlement programs. Among other changes, the Department of Social Services (DSS) was redesignated the Family Independence Agency (FIA), and the old Aid to Families with Dependent Children (AFDC) program was replaced with a new FIA program. Under this new program, applicants for assistance must attend orientation sessions conducted by the FIA and the Michigan Jobs Commission within one week after the FIA determines whether they are eligible for assistance. Applicants must then develop a social contract that defines their obligations to seek work or other productive activities. Each adult and child aged 16 or older who is not in school is then required to participate in the Work First

employment and training program, and those who do not cooperate with Work First or any social contract requirement can be penalized. These changes were said at the time to represent "the end of welfare as it had existed for decades, and the beginning of an era in which the 'work ethic' would be emphasized."

FISCAL IMPLICATIONS:

The House Fiscal Agency (HFA) estimates that the bills would have an indeterminate impact on state funds, since the number of applicants who might require substance abuse testing is unknown at this time. Also, the HFA estimates that, if individuals are tested for substance abuse and therapy is recommended, an additional cost in excess of \$1,000 per individual would be incurred. The HFA estimates that the number of drug tests could exceed 175,000 annually if all Family Independence Program (FIP) applicants and all current FIP recipients whose cases come up for an annual review or redetermination are required to be tested. Based on a cost of \$100 per case (including the cost of testing, assessment, and case management), the initial costs to the department could exceed \$17.5 million. It is estimated that as many as 15 percent of the individuals tested would require treatment, and the average cost of this treatment is estimated to be \$3,000 per case. Therefore, treatment costs would exceed \$78.7 million. According to the HFA, it is unclear at this time if these costs would be eligible for Medicaid reimbursement, and, if eligible, what percentage would be reimbursed. (2-3-99)

According to a Family Independence Agency (FIA) analysis, the provisions of the bills would be accomplished using existing FIA and Department of Community Health (DCH) funds. The analysis also notes that, while costs will be incurred when substance abuse testing is implemented across the state, savings are also anticipated in reduced recidivism rates. (2-3-99)

ARGUMENTS:

For:

The problems resulting from substance abuse are well known. Substance abuse affects not only the abuser, but also the abuser's family, community, and the state, since many of these families require more help from the medical and the mental health communities than other families, and many ultimately come to the attention of the Children's Protective Services (CPS) and the justice system. However, the affect on the

children of substance abusers is the problem that gives the greatest cause for concern. The children of parents who are addicted to drugs often exhibit aggressive behavior in school, or become depressed. In addition, drug addiction frequently triggers child abuse and neglect, and these children are more likely than other children to abuse drugs themselves. Often, the catalyst for welfare dependency and the barriers to self-sufficiency are rooted in substance abuse. Ultimately, substance abusers have trouble finding, and keeping, jobs.

The goal of "Project Zero Tolerance" is to help applicants for FIA assistance become independent of drugs and of welfare. In the interest of sampling a cross-section of the population, three sites would be selected for the proposed pilot programs: a rural county, a county with an urban population, and an FIA district in Wayne County. Applicants would be referred for drug testing by FIA employees, and, as long as each applicant complied with this requirement, applications would be completed and assistance cases would remain open. In addition, current FIA clients would be selected randomly -- when their cases came up for an annual review, for example -- and asked to report to a designated site for testing.

The Department of Community Health (DCH) would assist in assessing individuals who tested positive, in determining the appropriate type of treatment, and in promoting substance abuse services. FIA clients would have to comply with treatment procedures in order to continue receiving benefits. However, the goal is not to punish substance abusers. Rather, it is to break down the barriers to employment and self-sufficiency for these individuals, and, through these means, help reduce the risks to their children.

For:

Employers are increasingly inclined to require drug tests before hiring. The reason is that drug abuse costs billions of dollars due to absenteeism, medical claims, lost productivity, and accidents. In an article on drugs in the workplace in the January 1999 issue of *Michigan Chamber of Commerce*, Steven J. Fishman, special labor counsel to the Michigan Chamber, writes "Crisis costs to American industry from drug abuse can be prevented only where employers identify employee drug users before the problem arises." Mr. Fishman identifies drug abuse as a "major social problem which continues to spill over into the workplace," and cites statistics which point out that a substance abusing employee has three times more absences, is 40 percent less productive, and is

involved in four out of ten industrial fatalities and five out of ten industrial accidents.

Against:

The bills aspire to help individuals become self-sufficient through employment. However, substance abuse is not the only barrier to employment. Many people believe that alcohol abuse is a far more common problem for welfare recipients. In addition, statistics show that nearly half of adult welfare recipients never completed high school. Many more have learning disabilities, and some are mildly mentally retarded. It is unwise to spend state funds on drug testing until these problems are also identified and addressed.

Response:

It is generally acknowledged that alcohol abuse is a far greater problem than substance abuse -- for welfare recipients and for the public-at-large. However, since alcohol dissipates in the bloodstream quickly, it is difficult to test for alcohol abuse.

Against:

The bills would require that applicants for FIA assistance submit to drug testing as a condition of eligibility. Many believe that this provision singles out one segment of society -- the poor -- and subjects them to an invasion of privacy. It is argued that no one should be required to give up his or her right to privacy to get government help.

Response:

In an analysis of the bills, the FIA contends that its staff are sensitive regarding individual rights to privacy, and points out that drug testing is currently required in CPS cases when the health and safety of a child is questioned. The department maintains that these cases are dealt with in strict confidentiality.

Against:

Substance abuse screening should be part of a more comprehensive screening program and should be undertaken only if Family Independence Program recipients fail to comply with work requirements, according to written testimony presented to the House Committee on Family and Children Services from a nonprofit law firm that works with welfare recipients, among other clients. As an alternative, the law firm suggests that applicants be offered substance abuse education and screening, with counseling and treatment provided for those who test positive for substance abuse. The law firm also suggests that rules be issued by the FIA and the DCH, in cooperation with the Substance Abuse Coordinating Agencies, outlining the standards to be used by FIA caseworkers in identifying applicants and recipients who don't comply with Work First requirements.

Response:

The FIA maintains that testing all new FIP recipients is better than testing only "for cause" (for recipients who failed to comply with work requirements) for the following reasons:

- A positive drug test would result in treatment.
- If the FIA were to test only "for cause," it is likely that the individual would already have failed a drug test with a potential employer, lost a job because of drugs, or been arrested.
- Testing "for cause" would give recipients the false hope that they might be able to hide their drug dependency.
- Testing "for cause" means that fewer people who need help will receive it.

Against:

As written, House Bill 4090 is overly vague. The bill specifies that the FIA may require substance abuse testing as a condition for "Family Independence Assistance eligibility" This would indicate that substance abuse testing is to be required of applicants for *all* FIA assistance. However, during a public hearing before the House Committee on Family and Children Services, it was generally understood, and indicated several times during testimony, that the assistance referred to in the bill was Family Independence Program (FIP) assistance. (FIP replaced Aid to Families with Dependent Children [AFDC], and provides monthly cash assistance to families for subsistence needs.) Language is needed to clarify this. Otherwise, persons applying for assistance from other FIA programs, such as State Disability Assistance, or State Emergency Relief, would have to submit to drug testing.

POSITIONS:

The Family Independence Agency (FIA) supports the bills. (2-3-99)

The Salvation Army, Western Michigan Northern Indiana Division, supports the bills. (2-3-99)

The Michigan Association of Substance Abuse Coordinating Agencies has no position on the bills. (2-3-99)

The Michigan League for Human Services has no position on the bills, but would support legislation under which substance abuse assessments were performed only when there was cause to believe that an

FIA applicant had a substance abuse problem. (2-3-99)

The Center for Civil Justice opposes the bills. (2-3-99)

The National Council on Alcoholism and Drug Dependence of Michigan, Inc. (NCADD) opposes the bills. (2-3-99)

The Michigan County Social Services Association opposes the bill. (2-4-99)

The American Civil Liberties Union (ACLU) opposes the bills. (2-4-99)

Analyst: R. Young

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.