Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536

BILL ANALYSIS

Telephone: (517) 373-5383
Fax: (517) 373-1986
TDD: (517) 373-0543

House Bill 4482 (Substitute S-1 as reported)
Sponsor: Representative Brenda Clack
House Committee: Families and Children's Services
Senate Committee: Families and Human Services

Date Completed: 5-14-07

RATIONALE

Legislation enacted in 2005 amended several provisions of the Social Welfare Act, including requirements that an applicant for assistance attend an orientation session and the Department of Human Services (DHS) develop a social contract, after the DHS made an initial determination that he or she might be eligible for assistance. Public Acts 468 through 471 of 2006 then amended the Act to establish a 24-month cumulative lifetime limit on family independence assistance, provide certain exemptions from participation in Work First activities, and impose new penalties for failing to participate as required or not complying with other requirements under the Act, among other changes. Under the 2005 amendments, after the DHS makes an initial determination that an applicant is eligible for family independence assistance, he or she must attend an orientation session and a family self-sufficiency plan must be developed. According to the DHS, this change in the law has led to an unanticipated increase in the number of new cases that the Department must process.

Others have raised additional issues, including concerns about the language in some of the penalty provisions. It has been suggested that these matters be addressed through further amendments to the Act.

CONTENT

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

-- Require an individual to participate in assigned work-related activities once it was determined that he or she could be eligible for family independence assistance and was not exempt from Work First.

-- Require the Department of Human Services and the Department of Labor and Economic Growth (DLEG) to hold weekly orientation sessions (instead of joint orientation sessions at least weekly) for family independence assistance applicants.

-- Establish a sunset date of September 30, 2011, on the section that provides for a 48-month cumulative limit on family independence assistance.

-- Permit a recipient to apply for a 12-month extension of assistance beyond the 48-month limit if he or she had not received more than two penalties after October 1, 2007 (when the 48-month limit began), rather than after December 31, 2006.

-- Apply two different definitions of "noncompliance" in the Act to two separate sets of penalties: those that were in effect until March 30, 2007, and those that apply from April 1, 2007, to September 30, 2011.

-- Apply penalties for noncompliance after April 1, 2007, to the recipient's family, rather than to the recipient.

Work First Requirements

Under the Act, after the DHS initially determines that an adult or a child aged 16 or older who is not attending elementary or secondary school full-time is eligible for family independence assistance, that individual must attend a joint orientation

session for assistance applicants, conducted by the DHS and DLEG.

The bill would require instead that the individual participate in assigned work-related activities after the DHS made an initial determination that the individual might be eligible for assistance and was not exempt from Work First participation under the Act.

Currently, if an individual fails to cooperate with Work First or other required employment or training activities, the family is ineligible for assistance. The bill would retain this provision, but would refer to an applicant who was not exempt from Work First participation, rather than an individual.

The Act requires the DHS and DLEG to conduct joint orientation sessions for family independence assistance applicants at least weekly. The bill would require the departments to hold weekly orientation sessions, but would not require the sessions to be held jointly.

Definition of Noncompliance

Section 57g describes penalties for noncompliance with the Act that were in effect until March 31, 2007, and also contains separate provisions for penalties that took effect on April 1, 2007.

There are two different definitions of "noncompliance" in that section. Under the bill, for the purposes of the provisions that expired March 31, 2007, the following definition would apply:

-- A recipient quits a job.
-- A recipient is fired for misconduct or absenteeism without good cause.
-- A recipient voluntarily reduces the hours of employment or otherwise reduces earnings.
-- A recipient does not participate in Work First activities.

For the purposes of the penalties that took effect on April 1, 2007, "noncompliance" would mean one or more of the following:

-- A recipient quits a job.
-- A recipient is fired for misconduct or absenteeism.
-- A recipient does not participate in Work First activities.
-- A recipient is noncompliant with his or her family self-sufficiency plan.

Penalties for Noncompliance

Under the Act, beginning April 1, 2007, if a recipient does not meet his or her self-sufficiency plan requirements and is therefore noncompliant, the DHS must impose a penalty as follows:

-- For the first and second instances of noncompliance, the recipient is ineligible to receive family independence assistance for at least three calendar months.
-- For the third instance of noncompliance, the recipient is ineligible to receive family independence assistance for 12 calendar months.

The bill would apply those penalties to the family, rather than to the recipient.

Notice of Noncompliance

Under the Act, before determining that a penalty will be imposed for an instance of noncompliance, the DHS must determine if good cause for the noncompliance exists, and must notify the recipient that he or she has 10 days to demonstrate good cause.

The bill would remove that provision, instead providing that for any instance of noncompliance, the recipient could receive not more than 12 days' notice before the penalties were imposed. If the recipient demonstrated good cause for the noncompliance during this period, the penalties could not be imposed.

(Under the Act, the subsections containing these provisions do not apply after March 31, 2007.)

Sunset Provision

Under Section 57r of the Act, beginning October 1, 2007, if a recipient is eligible to participate in Work First and resides in a county where a Jobs, Education and Training (JET) program is available, family independence assistance may be paid to that individual for a maximum cumulative total of 48 months, although a recipient may apply for a 12-month extension under certain circumstances. To qualify for an extension, the recipient must be meeting all of the requirements in his or her family self-

sufficiency plan, and may not have received more than two penalties under the Act after December 31, 2006. The bill would move that date to October 1, 2007.

Under the bill, Section 57r would not apply after September 30, 2011.

MCL 400.57d et al.

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument
Amendments to the Social Welfare Act made in 2005 have caused an unexpected rise in the Family Independence Program caseload, by requiring the DHS to open cases earlier than was previously required. In some instances, those cases never result in individuals' receiving assistance, either because they are determined to be ineligible, or because the applicants fail to comply with Work First or other requirements. To eliminate the expense of opening cases unnecessarily, the bill would require individuals to begin Work First activities as soon as it was determined that they could be eligible for assistance. This requirement could discourage applicants from the outset if they were not serious about participating in Work First. If an individual did not comply with the work requirement, he or she would be considered ineligible, and the DHS would not have to open a file for that individual. The DHS estimates that the reduction in cases could be approximately 900 cases in the current fiscal year and 5,000 cases in fiscal year 2007-08.

Response: The process outlined in the bill could cause some applicants to be considered ineligible for assistance unfairly. The DHS uses two forms to determine Work First eligibility; the first is a short, cursory form that identifies some exemptions, but may not reveal others. The longer form, which is used to identify some of the less obvious obstacles to participation, would not be completed until after the individual was required to begin participating in Work First. In other words, the individual would have to participate in Work First before the DHS made a thorough assessment of his or her suitability for that program. If the initial determination failed to find an exemption from Work First, the individual would have to participate in order to qualify for benefits, even if he or she had a legitimate disqualifying condition. The bill could prevent those individuals from receiving assistance, or could discourage some individuals with legitimate needs from applying for assistance.

Supporting Argument
The Act requires that orientation sessions for family independence applicants be held jointly by the DHS and DLEG. For practical reasons, it is very difficult in some areas to arrange weekly sessions that include both Departments. The bill would maintain the requirement for weekly sessions, but would eliminate the requirement that they be held jointly, to allow maximum flexibility for local offices to offer the orientation sessions in the most effective way possible.

Supporting Argument
The current penalties were enacted to provide a stronger incentive for individuals to participate in Work First and make a good faith effort to uphold the responsibilities outlined in their family self-sufficiency plans. Although the Act provides many exceptions, recipients who are found to be in noncompliance with those requirements without good cause are subject to penalties that include loss of benefits for periods between 90 days and 12 months. As written, however, the penalties apply only to the recipient, rather than to the entire family. Consequently, if a penalty were imposed on a recipient, other members of the recipient's family still would be eligible for assistance during the penalty period, and the Department could be required to issue payments reduced by the amount attributed to the noncompliant individual, rather than terminating payments altogether during the penalty period. Such a penalty would not provide sufficient incentive for the individual to take the appropriate steps to comply with his or her obligations. By eliminating benefits to the entire family, rather than to the individual only, the bill would strengthen the incentive to participate in Work First and otherwise comply.

While serious, the penalties would be fair and would be imposed only in cases of egregious violations. The DHS has many policies in place to work with individuals who are found to be in noncompliance, and according to testimony before the Senate

Committee on Families and Human Services, in many instances an individual may avoid a penalty even without demonstrating good cause, simply by signing an agreement to meet certain obligations going forward. The penalties are reserved for situations in which a greater impetus is needed to push individuals to take the necessary steps toward self sufficiency. Reportedly, the previous penalties were not severe enough to have an effect on recipients, and it is doubtful that simply reducing payments for three months would have a significant effect either.

Response: The bill should include a one-year sunset on this provision to ensure that policy-makers re-examine the issue and determine its impact on families and children.

Supporting Argument

The bill would shorten the amount of time before a penalty could be imposed under the Act. Currently, the DHS must send out a notice that the individual is not complying with the Act, stating that he or she has 10 days to demonstrate good cause for noncompliance. If good cause is not demonstrated, the DHS then must send out a negative action notice, indicating that a penalty will be imposed. Administrative rules require that the penalty not take effect until 10 days after a negative action notice is given (R 400.902), and according to a spokesperson for the DHS, departmental policy actually requires a period of 12 days before the penalty takes effect, to give the recipient an opportunity to respond or protest the action. Under these procedures, it may take a total of 22 days before the penalty is implemented. The bill would reduce that time by allowing the two waiting periods to place concurrently. A person would have a maximum of 12 days during which he or she could either provide evidence of good cause or request an appeal. As currently provided, if a request for an appeal were granted, the penalty would be suspended pending the results of that decision. These provisions (if they applied to penalties that are currently in effect) would safeguard the rights of the recipients, while streamlining the process and allowing the penalty to go into effect more quickly.

In areas where JET pilot programs are in effect, the DHS reportedly has been allowing both waiting periods to pass concurrently, and no negative effects have been observed. The results of appeals and determination of good cause are substantially the same as in other areas.

Response: The two waiting periods serve two separate purposes, and combining them could confuse recipients over what actions need to be taken to prevent a loss of assistance. Under the bill, a recipient who received a negative action notice would have only 12 days to supply evidence of good cause for his or her noncompliance, appeal the penalty, or possibly both. If the recipient were unclear about either of those options or the steps that needed to be taken, he or she could lose assistance unnecessarily and unfairly.

Opposing Argument

Imposing a penalty on an entire family would unjustly punish the children of the noncompliant individual. While those who violate the terms of their family self-sufficiency plans should be held accountable, recipients' children should not be made to suffer because of the choices of their parents. Although some are concerned that the money allocated for children would be diverted for other uses by the parents, alternative measures could be taken to distribute the assistance through a third party. Reportedly, the DHS already has similar procedures in place to handle situations in which a parent or guardian is not considered trustworthy to receive payments.

Response: Although the bill would cut off cash assistance to families of noncompliant recipients, the families still would have access to other benefits such as food stamps and assistance under the WIC program. The penalty is designed not to punish the children or family of the recipient, but to provide a significant motivation for the individual to make the necessary changes to meet his or her obligations and move toward self-sufficiency. During the discussions surrounding the 2006 amendments to the Act, it was generally agreed that the penalty should be an elimination of benefits during the penalty period, rather than a reduction of benefits. The bill would clarify the penalty language to reflect that goal.

Legislative Analyst: Curtis Walker

FISCAL IMPACT

The bill would have a fiscal impact on State government. The Department of Human Services has experienced a 13% increase in the Family Independence Program (FIP) caseloads since May 2006. The Department indicates that this caseload increase is partly attributable to a 2005 policy change in the Social Welfare Act that requires FIP cases to be opened before clients attend the orientation session and begin participation in work-related activities. The elimination of the 2005 legislative policy would reduce the number of case openings and save FIP payment costs. The DHS estimates savings in payment costs of $4.7 million for FY 2006-07 and $24.4 million for FY 2007-08, an average caseload reduction of approximately 900 cases and 5,000 cases, respectively.

Fiscal Analyst: Constance Cole

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