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Senate Bill 275 (as enrolled)
House Bill 4118 (as enrolled)
Sponsor: Senator Joe Hune (S.B. 275)
Representative Jeff Farrington (H.B. 4118)
Senate Committee: Families, Seniors and Human Services
House Committee: Families, Children, and Seniors

Date Completed: 12-16-14

CONTENT

The bills would amend the Social Welfare Act to require the Department of Human Services (DHS) to establish and administer a pilot program of suspicion-based substance abuse screening and testing for Family Independence Program (FIP) applicants and recipients. Specifically, the bills would do the following:

- **Require the DHS to administer the pilot program in three or more counties.**
- **Require the DHS to screen FIP applicants and recipients for suspicion of substance abuse, using an empirically validated substance abuse screening tool.**
- **Require a person to take a substance abuse test if the screening results gave the DHS a reasonable suspicion to believe that he or she had used a controlled substance.**
- **Provide that an applicant or recipient would be ineligible for FIP assistance, but could reapply after six months, if he or she refused to take a substance abuse test.**
- **Require the DHS to refer an applicant or recipient to a Department-designated community mental health (CMH) entity, and continue to provide FIP assistance, the first time he or she tested positive.**
- **Provide that an applicant or recipient would be ineligible for assistance, and allow the DHS to refer the individual to a CMH entity, if he or she tested positive a second or subsequent time.**
- **Require the pilot program to begin by October 1, 2015, and conclude by September 30, 2016, but last at least one year.**
- **Require the DHS to report to the Legislature on the program within 60 days after it concluded.**

For purposes of the bills, an applicant or recipient would be an individual who was 18 years of age or older.

Also, for purposes of the bills, "use of a controlled substance" would not include a recipient or applicant who had a prescription for the controlled substance from a treating physician or a recipient or applicant who tested positive for marihuana if he or she were a qualifying patient and had been issued and possessed a registry identification card according to the Michigan Medical Marihuana Act.

"Controlled substance" would mean that term as defined in the Public Health Code.

The bills are tie-barred.

House Bill 4118

Subject to State appropriation, the bill would require the DHS to administer a suspicion-based screening and testing pilot program for FIP applicants and recipients in three or more counties selected by the Department.

Upon initial application and at annual redetermination, the DHS would have to screen FIP applicants and recipients for suspicion of substance abuse, using an empirically validated substance abuse screening tool. If the screening results for an applicant or recipient gave the DHS a reasonable suspicion to believe that the person had engaged in the use of a controlled substance, the person would have to take a substance abuse test.

An applicant or recipient who refused to take a substance abuse test would be ineligible for assistance but could reapply after six months. If the person reapplied, he or she would have to test negative for use of a controlled substance.

If the test results were negative, the DHS would have to pay for the cost of administering the test.

Senate Bill 275

Consequences of Positive Test Results

The bill would require the DHS to refer an applicant or recipient to a Department-designated community mental health entity if the individual tested positive for use of a controlled substance and it were the first time he or she tested positive under the pilot program. The DHS would have to provide or continue to provide FIP assistance to the individual, if he or she were otherwise eligible. The cost of administering the test would have to be deducted from the applicant's or recipient's FIP payment. If the individual failed to participate in treatment offered by the designated CMH entity, or failed submit to periodic substance abuse testing required by the entity, the DHS would have to terminate his or her FIP assistance.

The second or subsequent time an applicant or recipient tested positive for use of a controlled substance under the pilot program, he or she would be ineligible for FIP assistance. If the individual reapplied, he or she would be required to test negative for use of a controlled substance, in order to receive FIP assistance. The DHS could refer the applicant or recipient to a Department-designated CMH entity for substance abuse treatment.

The bill would define "department-designated community mental health entity" as that term is defined in the Mental Health Code (the CMH authority, CMH organization, CHM services program, county CMH agency , or CMH regional entity designated by the Department of Community Health to represent a region of CMH authorities, CMH organizations, CMH services programs, or county CMH agencies).

Report to the Legislature

Within 60 days after the pilot program concluded, the DHS would have to 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 use of a controlled substance.
- The number of individuals who consented to submitting to a substance abuse test.
- The number of individuals who refused to submit to a substance abuse test.
- The number of individuals who submitted to a substance abuse test who tested positive for use of a controlled substance.
- The number of individuals who submitted to a substance abuse test who tested negative for use of a controlled substance.

- The number of individuals who tested positive for use of a controlled substance a second or subsequent time.
- The amount of costs incurred by the DHS for administering the program.
- The number of applicants and recipients who were referred to a Department-designated CMH entity.
- Sanctions, if any, that had been imposed on recipients as a result of the substance abuse testing.

Proposed MCL 400.57z (S.B. 275)
 Proposed MCL 400.57y (H.B. 4118)

BACKGROUND

In 1996, the Federal government enacted the Personal Responsibility and Work Opportunity Reconciliation Act, which established the Temporary Assistance for Needy Families (TANF) program. The Act tasked states with designing programs to move families from government aid to financial independence. Further, the Act authorized states to test TANF recipients for use of controlled substances, and sanction recipients who test positive.

Michigan offers TANF benefits through the Family Independence Program, which provides temporary cash assistance to families. In 1999, Michigan began a pilot program of random drug testing in certain areas of the State. The program required applicants to pass a substance abuse test as a condition of receiving FIP benefits. Applicants who tested positive had to participate in substance abuse assessment and comply with a required substance abuse treatment plan. If an applicant failed or refused to take a test, or failed to comply with a treatment plan, without good cause, benefits were generally denied or terminated.

In 2000, a U.S. District Court found Michigan's pilot program unconstitutional (*Marchwinski v Howard*, 113 F. Supp. 2d 1134). The Court held that, in the absence of individualized suspicion, the State had not demonstrated a "special need" that satisfied the U.S. Constitution's Fourth Amendment protection against unreasonable searches. The Court found that the goals of TANF and FIP were generally to provide financial support to needy families and increase recipient independence. Since neither program was designed to advance a special need such as public safety, the State had not justified singling out FIP applicants and recipients for *suspicionless* drug testing. Ultimately, an equally divided panel of the U.S. Sixth Circuit Court of Appeals upheld the District Court's ruling.

In recent years, a number of other states have proposed or enacted drug testing and screening programs for assistance recipients. According to the National Conference of State Legislatures, legislation has been enacted in at least 11 states: Alabama, Arizona, Florida, Georgia, Kansas, Mississippi, Missouri, North Carolina, Oklahoma, Tennessee, and Utah.¹ Like Michigan's original program, Florida's law required suspicionless drug testing; it was found unconstitutional by a U.S. District Court in December 2013 and that decision was upheld by the U.S. Eleventh Circuit of Court of Appeals.

In other states, the drug testing requirements are based on a reasonable suspicion to believe that an applicant or recipient is engaging in illegal drug use. In some states, reasonable suspicion relies on a chemical, biological, or physical instrument to detect the presence of drugs. In other states, applicants or recipients are required to complete a written questionnaire that determines the likelihood of a substance abuse problem.

Legislative Analyst: Suzanne Lowe

¹ "Drug Testing for Welfare Recipients and Public Assistance", National Conference of State Legislatures, 11-6-2014.

FISCAL IMPACT

The bills would have an undetermined fiscal impact on the State and no fiscal impact on local units of government. The bills as passed by the House and concurred in by the Senate would make administration of the program subject to State appropriation, but would not designate funding.

The bills would require the Department of Human Services to establish a substance abuse screening and testing pilot program for FIP assistance in three or more counties. Any costs or savings that could be realized due to the pilot program would depend on the number of FIP clients and applicants in each county, the percentage of these who tested positive, and the percentage of those who tested positive who would go to treatment and thus remain eligible for assistance.

Although the bills would not require the DHS to implement a statewide program, if that occurred the annual net costs/savings would depend on several unknown factors. Based on the experiences of other states in setting up similar programs, the costs to implement a drug testing program statewide could range between \$700,000 and \$2.4 million Gross. This estimate includes an empirically valid screening tool and the costs of the drug tests. Substance abuse treatment could result in increased costs to the State in the long term due to reasons that are described later in the analysis.

Caseload savings could be possible, but would depend on the implementation of the empirically valid screening tool, as well as the percentage of recipients who tested positive for drugs and successfully completed a substance abuse treatment program. Savings due to caseload reductions could reach \$2.2 million Gross on annual basis. (The cost and savings estimates were revised from earlier estimates to reflect updated caseload projections.)

The bills would require the DHS to submit a report on the results of the pilot program, including actual costs and data on the caseload impacts, which would allow for a more precise estimate to implement a statewide program.

The following is an analysis of a potential statewide, ongoing substance abuse screening and testing program.

Potential Savings Calculations

There are several possible scenarios in terms of projecting ongoing, annual savings estimates. The State could realize up to \$2.2 million Gross/\$440,000 GF/GP in caseload savings if the program were implemented statewide. The Family Independence Program is funded with approximately 20.0% GF/GP and 80.0% Federal funding.

The bills, as passed by the House and concurred in by the Senate, would not allow children to continue to receive FIP assistance if the head of household were removed from the caseload, but would exempt child-only cases from the testing. Michigan's projected monthly FIP caseload consensus projection in FY 2014-15 is 32,800 and the projected average monthly payment is \$363. (The analysis for the bills as passed by the Senate was based on the FY 2013-14 caseload projection.) The average number of child-only FIP cases from January 2012 to June 2012 was 13,000, making the total projected number of cases that could be affected by a drug testing policy if it were implemented statewide approximately 19,800. For every case that was removed from assistance for six months, the State would save approximately \$2,200. For every case that was removed from assistance for 12 months, the State would save approximately \$4,400.

If the DHS were able to identify 5.0% of FIP clients as drug users (approximately 990 cases), this group would be referred to substance abuse treatment and would be able to remain on assistance assuming that the individuals maintained their eligibility requirements otherwise. The National Institute of Health estimates that between 40.0% and 60.0% of those treated for illegal drug use will relapse. If half of those who were referred to treatment again tested positive, or if they refused treatment, the State could realize approximately \$2.2 million Gross/\$440,000 GF/GP in caseload savings for 12 months. Other states that have implemented similar programs, such as Missouri and Kansas, also have seen caseload reductions when those who referred for a drug test refused to take the test and their benefits were discontinued.

The percentage of welfare recipients who use illegal drugs is similar to – and 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 use among welfare recipients that consolidated data from several studies. According to the HHS, most of these studies found that between 5.0% and 10.0% of welfare recipients abuse illegal drugs. Similarly, in 1999, Michigan's pilot program 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. 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 5.0% of the total FIP caseload would be identified as drug users (approximately 990 cases).

Cost Calculations

The cost estimate of \$700,000 to \$2.4 million for a statewide program is based on information from a 1999 Florida pilot program and a program implemented in Missouri in 2012.

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 19,800). The total baseline costs – excluding the costs of the drug test itself – could be approximately \$1.6 million.

While individuals who tested positive would be responsible for the cost of the test, the State would pay the costs of applicants and clients who tested negative or who showed a false positive. The costs to the State of Michigan to cover false positive drug tests or negative tests would total approximately \$0.8 million Gross. 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 who were referred by the screening tool tested positive for drugs (or 5.1% of the total caseload and new applicants). If this 17% difference is applied to the adult FIP caseload, approximately 3,300 cases could be referred to take a test and test negative.

Missouri's suspicion-based program was projected to cost up to \$2.6 million in FY 2012-13, \$700,000 of which was for administrative costs. 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. This analysis does not assume substance abuse treatment costs, as costs are not likely to be realized in the short term.

While it is possible that the State could realize an increase in substance abuse treatment costs if the pilot were implemented statewide, any increase would be realized as indirect costs, and would have to be significant enough to affect Medicaid substance abuse capitation rates as a whole. Approximately 95.0% of FIP recipients (or 940 of the potential 990 cases that could test positive) would be eligible for substance abuse treatment through the capitated services that are provided through Medicaid. Approximately 5.0% of the population would be required to seek services through community substance use disorder prevention, education, and treatment programs in the Department of Community Health (DCH). It is not known whether the referral of FIP clients would result in increased costs and caseloads in substance abuse services programs, or whether an influx of FIP recipients would simply reduce the number of treatment slots that are available to other clients on the Medicaid side. If, for any reason, the bills did result in a significant increase in Medicaid-funded substance abuse cases, however, the increase could cause stress in the Medicaid capitation rates in the long term, potentially increasing the costs for Medicaid services. The DCH currently prioritizes treatment for welfare recipients, as Section 410 of the enacted FY 2014-15 budget for the Department does give priority to public assistance applicants and clients. Outpatient and residential treatment costs range between approximately \$700 and \$2,400 per person.

Additional Unknown Factors

Potential annual savings and additional costs would be based on several unknown factors, some of which would be determined by departmental policy and others of which would be based on individual clients. One the key undetermined factors concerns implementation of the screening tool and drug test. Related 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. Another key undetermined factor is the number of people who would refuse to take a test and would be ineligible for FIP assistance. The results of Florida's 1999 pilot project showed that 21.0% of applicants and recipients refused to take the screening and therefore were not eligible for assistance. Arizona has found that a significant number of applicants declined to participate in that state's initial screening tool. If these precedents are a good indicator of what could be expected to take place in Michigan, the FIP caseload would be reduced on the front end. An additional key factor is that referrals to substance abuse treatment likely would be higher in the first few years of statewide implementation, but could level off in subsequent years.

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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.