

Department of Legislative Services
Maryland General Assembly
2012 Session

FISCAL AND POLICY NOTE

Senate Bill 287

(Senators Jennings and Shank)

Finance

Family Investment Program - Eligibility - Drug Testing

This bill requires individuals applying for or receiving temporary cash assistance benefits under the Family Investment Program to submit to testing for controlled dangerous substances. An applicant or recipient of assistance who fails to submit to testing or tests positive is prohibited from receiving benefits until certain criteria have been met.

Fiscal Summary

State Effect: General and federal fund expenditures increase by \$2.3 million in FY 2013, which accounts for the bill's October 1, 2012 effective date. This estimate reflects the cost of hiring additional staff to monitor compliance with the required testing and an expanded contract for drug assessment and testing. Future year expenditures reflect annualization and inflation. These additional expenditures may be partially offset by savings from the denial of benefits to applicants who test positive for drugs. No effect on revenues.

| (in dollars) | FY 2013 | FY 2014 | FY 2015 | FY 2016 | FY 2017 |
|----------------|---------------|---------------|---------------|---------------|---------------|
| Revenues | \$0 | \$0 | \$0 | \$0 | \$0 |
| GF Expenditure | 998,100 | 1,306,300 | 1,339,100 | 1,366,600 | 1,395,100 |
| FF Expenditure | 1,336,700 | 1,743,400 | 1,790,400 | 1,829,500 | 1,870,100 |
| Net Effect | (\$2,334,800) | (\$3,049,700) | (\$3,129,600) | (\$3,196,200) | (\$3,265,200) |

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: None.

Small Business Effect: Potential meaningful for laboratories that qualify as small businesses and provide urinalysis testing services.

Analysis

Bill Summary: The bill conditions eligibility for temporary cash assistance benefits under the Family Investment Program on submitting to testing for controlled dangerous substances. Procedures are established for applicants and recipients of benefits who do not meet specific requirements.

- ***Applicants:*** A local department of social services must deny temporary cash assistance to an applicant if he or she tests positive for a controlled dangerous substance. An applicant who tests positive may reapply for temporary cash assistance once successfully completing a drug abuse treatment program or after 90 days if treatment is unavailable and a subsequent drug test is negative.
- ***Recipients:*** If a recipient does not comply with drug testing requirements, the recipient must be provided 30 days notice that benefits will be redirected due to lack of compliance. Temporary cash assistance immediately resumes once the recipient tests negative for abuse of controlled dangerous substances. If a recipient does not submit to testing within the 30-day notice period or tests positive for a controlled dangerous substance, a local department of social services must redirect temporary cash assistance benefits to a third-party payee or compliant adult recipient. Assistance resumes once the recipient successfully completes a drug abuse treatment program or after 90 days if treatment is unavailable and a subsequent drug test is negative.

Current Law: Assessment of temporary cash assistance recipients for substance abuse problems is mandatory, with participation in treatment required of those for whom it is appropriate. An addictions specialist must assess an applicant when the initial application is made or as considered appropriate by a case manager. If a drug screening reveals that an applicant or recipient has a substance abuse problem, the addictions specialist must refer the individual to treatment services. An individual who complies with treatment requirements continues to be eligible for assistance and may be exempt from other work activity requirements.

If an ***applicant*** does not comply with requirements, the local department of social services must send notice that the application will be denied if requirements are not met within 30 days. If a ***recipient*** does not comply with requirements, the local department must send notice that benefits will be redirected to a third-party payee or compliant adult recipient if requirements are not met within 30 days. The local department of social services must reinstate benefits if the applicant or recipient receives the required screening and assessment and appropriate substance abuse treatment is not available.

Applicants or recipients convicted of a felony involving possession, use, or distribution of a controlled dangerous substance are also subject to drug testing.

Background: The Michigan Family Independence Agency implemented a similar pilot program in 1999, which required all applicants and a random sample of recipients to submit to drug testing. A substance abuse assessment and interview were required of individuals who tested positive. Individuals referred to treatment were required to comply unless extenuating circumstances prohibited them from doing so. Assistance was not available to applicants who refused to comply with drug testing requirements and incrementally reduced for recipients who were noncompliant.

In September 2000, the Federal District Court for the Eastern District of Michigan issued a preliminary injunction prohibiting suspicionless drug testing of applicants and recipients of public assistance, finding that the practice violated constitutional protections against unreasonable search and seizure. After an initial reversal by the Sixth Circuit Court of Appeals, the Sixth Circuit Court *en banc* affirmed the decision of the District Court in March 2003.

Following the decision, the federal District Court issued a consent order that included the terms of a State of Michigan and American Civil Liberties Union agreement permitting suspicion-based testing of applicants and recipients of public assistance. The protocol requires applicants and recipients to sign a release form that allows state agencies and employers to share drug test results and treatment information. The protocol also includes a substance abuse questionnaire for applicants and recipients, with those identified as at risk referred for testing and treatment as needed.

The Center for Law and Social Policy (CLASP) reports that in recent years, legislators in at least 27 states have proposed mandatory drug testing for recipients of temporary cash assistance or other public benefits. Although a similar law was enacted in Florida in 2011, a federal judge issued an order temporarily blocking implementation of the law, stating that it may violate a constitutional ban on unreasonable search and seizure. The order is being appealed. Legislation has also been proposed at the federal level numerous times.

State Expenditures: General and federal fund expenditures increase by \$2.3 million in fiscal 2013, which accounts for the bill's October 1, 2012 effective date. This estimate reflects the cost of hiring 13 family investment specialists, 2 supervisors, and 2 office clerks to monitor applications and ongoing eligibility of applicants while undergoing drug testing. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses. The information and assumptions used in calculating the estimate are stated below:

- all applicants for temporary cash assistance are tested for controlled dangerous substances, which will equate to a minimum of 43,529 additional referrals to testing each year;
- DHR expands its existing contract with the Alcohol and Drug Abuse Administration (ADAA) for managing referrals, responses, and testing to include an additional 29 specialists and all required testing supplies;
- ADAA increases its unreimbursed support to the DHR contract by \$142,623 annually (\$106,967 in fiscal 2013) to reflect the additional expenditures; and
- the publicly funded treatment system does not expand as a result of the new referrals.

| | |
|---|--------------------|
| Position(s) | 17 |
| Salaries and Fringe Benefits | \$630,405 |
| Contract for Addictions Specialists | 1,486,520 |
| Other Operating Expenses | 110,893 |
| Additional ADAA Expenditures | <u>106,967</u> |
| Total FY 2013 State Expenditures | \$2,334,785 |

Future year expenditures reflect full salaries with annual increases and employee turnover as well as annual increases in ongoing operating expenses.

Because benefits for *recipients* who test positive for drugs will be redirected to third parties, there is no associated savings. However, not included in the estimate above is any potential reduction in expenditures if applicants do test positive for drugs and are therefore ineligible for immediate benefits. DHR advises that the average monthly benefit is \$175. *For illustrative purposes only*, if 5% of applicants annually are denied benefits for a 90-day period due to a positive drug test (and after 90 days are deemed eligible for benefits), State expenditures decrease by almost \$1.3 million (50% federal funds/50% general funds). The mandatory testing requirements may also deter individuals who would otherwise apply for benefits, resulting in a further expenditure reduction.

Additional Information

Prior Introductions: HB 585 of 2011 was referred to the House Appropriations Committee, but was withdrawn without a hearing. HB 1300 of 2008 received an unfavorable report from the House Appropriations Committee.

Cross File: HB 560 (Delegate Kipke, *et al.*) - Appropriations.

Information Source(s): Department of Human Resources, Department of Health and Mental Hygiene, Baltimore City, Caroline and Howard counties, Department of Legislative Services

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