

Department of Legislative Services
 Maryland General Assembly
 2013 Session

FISCAL AND POLICY NOTE

House Bill 834 (Delegate Stocksdales, et al.)
 Appropriations

Human Services - Public Assistance - Mandatory Drug Tests

This bill requires individuals applying for or receiving temporary cash assistance (TCA) benefits under the Family Investment Program (FIP) 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 a total of \$2.3 million in FY 2014, which accounts for the bill’s October 1, 2013 effective date, to hire additional staff within the Department of Human Resources (DHR) to monitor compliance with the required testing and to expand the 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. Special fund revenues increase from the payment of testing costs by applicants and recipients; special fund expenditures increase to provide reimbursements to individuals who test negative.

(\$ in millions)	FY 2014	FY 2015	FY 2016	FY 2017	FY 2018
SF Revenue	\$0.6	\$0.3	\$0.3	\$0.3	\$0.3
GF Expenditure	\$0.9	\$1.0	\$1.0	\$1.1	\$1.1
SF Expenditure	-	-	-	-	-
FF Expenditure	\$1.4	\$1.5	\$1.6	\$1.6	\$1.6
Net Effect	(\$2.2)	(\$2.5)	(\$2.6)	(\$2.6)	(\$2.7)

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 testing services.

Analysis

Bill Summary: The bill conditions eligibility for TCA benefits under FIP on submitting to testing for the use of controlled dangerous substances. The cost of the test must be paid by the applicant or recipient. However, the applicant or recipient must be reimbursed by DHR for the cost of the test if the test is negative for the use of controlled dangerous substances. DHR must provide notice to an applicant or recipient of the requirement to submit to testing. DHR must require applicants and recipients to sign a written acknowledgement that the individual was provided with the notice.

The notice must include a statement:

- that testing negative for the use of controlled dangerous substances is a condition for receiving FIP assistance;
- that the applicant or recipient must be responsible for the cost of the testing, but will be reimbursed for the costs if the test is negative for the use of controlled dangerous substances;
- that the required testing may be avoided if the individual does not apply for FIP assistance;
- informing the applicant or recipient of the circumstances under which the applicant or recipient may reapply for FIP assistance when a test is positive for the use of controlled dangerous substances; and
- advising the applicant or recipient that the applicant or recipient may, but is not required to, inform the person administering the test of any prescription or over-the-counter medication that the applicant or recipient is taking.

An applicant or recipient who tests positive for the use of a controlled dangerous substance is not eligible to receive assistance for a period of one year following the first positive test result and for a period of three years following a subsequent positive test result. If an individual tests positive for the use of a controlled dangerous substance, DHR must provide the individual with a list of licensed substance abuse treatment providers in the area in which the individual lives. The individual may reapply for assistance after six months if the individual enrolls in and successfully completes the

appropriate drug abuse treatment program and submits to repeat testing and the result of the test is negative. TCA must resume for a recipient after the individual completes treatment and submits to a drug test which is negative.

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. TCA 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 TCA benefits to a third-party payee or compliant adult recipient.

Current Law: Assessment of TCA 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.

After 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. In February 2013, the Eleventh Circuit Court of Appeals issued an opinion agreeing that Florida failed to meet its burden in establishing a special need for “its mandatory, suspicionless drug testing of TANF applicants.” The Court also rejected the state of Florida’s argument that the fact that drug testing is administered only to individuals who have consented to the test has any constitutional significance.

The Center for Law and Social Policy (CLASP) reports that, as of February 2013, legislators in at least 16 states have proposed drug testing for recipients of temporary cash assistance or other public benefits. Some of the proposals would require the testing of all applicants and recipients, while others would require screening all individuals, but only testing those individuals who indicate a likelihood of being a substance abuser. Legislation has also been proposed at the federal level numerous times.

State Fiscal Effect: General and federal fund expenditures increase by \$2.3 million in fiscal 2014, which accounts for the bill’s October 1, 2013 effective date. This estimate reflects the cost of hiring 8.5 family investment specialists, 1 supervisor, and 1 office clerk 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. This estimate assumes that DHR expands its existing contract with the Alcohol and Drug Abuse Administration within the Department of Health and Mental Hygiene (DHMH) for managing referrals, responses, and testing to include an additional 29 specialists.

Positions	10.5
Salaries and Fringe Benefits	\$404,027
Contract for Addictions Specialists	1,219,052
Testing Kits	561,008
Other Operating Expenses	<u>74,229</u>
Total FY 2014 State Expenditures	\$2,258,316

It is assumed that the general fund bears 40% of these costs and that federal funds pay for 60% of these costs.

Future year expenditures reflect full salaries with annual increases and employee turnover as well as annual increases in ongoing operating expenses. Not included in the estimate is any *additional* contract costs for DHMH that go beyond the amount estimated above. DHMH advises that it absorbs approximately \$300,000 per year in personnel expenses for its existing contract with DHR. If DHR expands its contract with DHMH to handle the additional workload necessitated under the bill, it is assumed that expenditures related to the unreimbursed support increase as well. *For illustrative purposes only*, although a more specific estimate was not provided in response to this bill, DHMH has previously advised for similar prior introductions that unreimbursed support for a comparable contract expansion is anticipated at approximately \$150,000 annually.

Also not included in the estimate above is any potential reduction in expenditures if recipients do test positive for drugs and are, therefore, ineligible to continue receiving full benefits. The mandatory testing requirements may also deter individuals who would otherwise apply for benefits, particularly because the individuals will be responsible upfront for testing costs, thereby resulting in a potential further expenditure reduction. An estimate of any potential savings cannot be reliably estimated beforehand. The Department of Legislative Services advises that the average monthly TCA benefit for fiscal 2014 is projected at \$182, and the Governor's proposed fiscal 2014 budget includes \$142 million for TCA funding (\$30 million general funds/\$112 million federal funds). *For illustrative purposes only*, for every 1% reduction in TCA payments, expenditures decrease by \$1.4 million.

The bill does not specify how often recipients are to be tested, so for purposes of this analysis, it is assumed that individuals represented on the current caseload are tested in the first year of implementation to ensure recipient compliance. Accordingly, it is assumed that DHR needs to test approximately 45,629 current recipients in fiscal 2014 in order to meet the bill's requirements (which excludes child-only cases). As new TCA applications are filed, DHR will test the individuals as part of the initial application process. If an additional 3,835 applicants must be tested per month, an additional 46,020 applicants need to submit to drug testing per year (34,515 in fiscal 2014 due to the bill's effective date). (This analysis does not account for the limited number of

individuals who might be tested under current screening standards.) DHMH has previously advised that oral swab drug testing kits are approximately \$7. If this testing mechanism is used, expenditures to purchase testing kits increase by \$561,008 in fiscal 2014, which is reflected in the estimate above.

For purposes of this analysis, it is assumed that DHR provides the testing kits (as reflected in the estimate above), then collects testing costs from the applicant or recipient (which are treated as special funds even though no special fund is designated in the bill). Individuals who have a negative drug test result are then reimbursed. Accordingly, special fund revenues increase by \$561,008 in fiscal 2014 reflecting testing fees received from current caseload recipients and new TCA applicants and by \$322,140 annually thereafter, reflecting testing fees received from new applicants. Special fund expenditures in the form of reimbursements increase to the extent that individuals receive negative test results. *For illustrative purposes only*, if 95% of individuals are eligible for reimbursement, special fund expenditures increase by \$532,958 in fiscal 2014 to provide reimbursements.

The Department of Legislative Services notes that, to the extent that DHR implements a more frequent testing schedule for recipients (*e.g.*, if recipients are required to submit to drug testing annually), special fund expenditures and revenues increase accordingly, as do the expenditures for contract expansion and testing kits.

Finally, this analysis does not include any additional State costs for treatment. It is assumed that the publicly funded treatment program does not expand as a result of this bill.

Additional Information

Prior Introductions: SB 287 of 2012 received an unfavorable report from the Senate Finance Committee. Its cross file, HB 560, was withdrawn. HB 585 of 2011 was referred to the House Appropriations Committee, but was later withdrawn. HB 1300 of 2008 received an unfavorable report from the House Appropriations Committee.

Cross File: None.

Information Source(s): Department of Human Resources, Department of Health and Mental Hygiene, Center for Law and Social Policy, Department of Legislative Services

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