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## FISCAL IMPACT REPORT

ORIGINAL DATE 02/08/11  
 SPONSOR Ezzell LAST UPDATED 02/09/11 HB 210  
 SHORT TITLE Public Assistance Drug Testing Eligibility SB \_\_\_\_\_  
 ANALYST Earnest

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY11	FY12	FY13	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
<b>LIHEAP</b>		\$85.9	\$85.9	\$171.8	Recurring	Federal Funds
<b>NM Works</b>		\$137.2	\$137.2	\$274.4	Recurring	Federal TANF Block Grant
<b>General Assistance</b>		\$20.6	\$20.6	\$41.2	Recurring	General Fund
<b>ISD Staff</b>		\$440.0	\$440.0	\$880.0	Recurring	General Fund and Federal Funds
<b>Fair Hearings Staff</b>		\$140.0	\$140	\$280.0	Recurring	General Fund and Federal Funds
<b>IT</b>		\$120.0	\$0.0	\$0.0	Non-Rec	General Fund and Federal Funds
<b>Total</b>		\$943.7	\$823.7	\$1,647.4		

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

Responses Received From  
 Human Services Department

### SUMMARY

#### Synopsis of Bill

House Bill 210 amends the Public Assistance Act to require

- applicants or recipients of public assistance (excluding Medicaid) to complete drug testing should “individualized suspicion” exist and undergo treatment if the test is positive as a condition of continued eligibility;

- the Human Services Department (HSD) to create a unit, either internally or by contract, capable of screening an applicant's or recipient's blood, hair, or urine for illegal substances based on set conditions as outlined in HSD's rules;
- HSD to refer applicant's or recipient's whose drug test indicates the use of an illegal substance to a treatment program; and
- HSD to impose a 12-month period of ineligibility should an applicant or recipient not comply with any condition of the drug testing and treatment process.

## **FISCAL IMPLICATIONS**

The bill applies to applicants for, or recipients of, benefits in three programs: Low Income Home Energy Assistance Program (LIHEAP), cash assistance in the Temporary Assistance for Needy Families (TANF) program, and the General Assistance Program. According to HSD, if testing is required of 5 percent of the population in these programs, the recurring annual cost for testing would be \$243.7 thousand (\$85.9 thousand from LIHEAP, \$137.2 thousand from TANF, and \$20.6 thousand from the general fund for the General Assistance program). HSD would contract for the testing services, and the assumed price for a basic screen test is \$10 (based on the current contract held by the General Services Department).

HSD reports that other potential costs and savings should be considered but could not be estimated. First,

“It is unclear if a disqualification under the bill would apply to just the individual who is a parent or would also apply to the parent's children. Under TANF, if the parent does not meet individual eligibility requirements, the eligible children can still receive benefits. There is a 5-year lifetime limit on TANF benefits for households with an adult parent but there is no lifetime limit for minors. Therefore, disqualifying only a parent and not the household could actually increase benefits paid out because cash assistance could continue until a minor turns 18 years of age, as opposed to the 5-year limit.”

Second, some individuals would be become ineligible for public assistance under the bill, but potential savings are unknown.

HSD also estimates modifications to the current eligibility system (ISD2) and client notices to insure the applicant or recipient receives appropriate information regarding the criteria and conditions of drug testing and treatment would cost approximately \$120 thousand.

HSD estimates the 10 new FTE would be needed: 8 FTE in the Income Support Division (ISD) and 2 FTE in the Fair Hearings Bureau. The total annual cost would be about \$580 thousand, about half of which would be a cost to the general fund. See the Administrative Implications section for more detail.

## **SIGNIFICANT ISSUES**

Federal law authorizes states to test TANF recipients for use of controlled substances. However, as HSD points out, drug testing is subject to challenge under the search and seizure clause of the fourth amendment of the U.S. Constitution and similar provisions of state constitutions. In Marchwinski v. Howard, 60 Fed. Appx. 601, 2003 W.L. 1870916 (6<sup>th</sup> Cir. 2003), a court found unconstitutional a Michigan law requiring “suspicionless” and random drug testing of applicants

for and recipients of public assistance benefits and imposition of sanctions for testing positive. HB 210 is different than the Michigan law struck down in Marchwinski in that it requires the Department to make “individualized suspicion” determinations to justify testing of a particular individual.

Given this important distinction HSD suggests that bill provide more definition of “individualized suspicion” for the purposes of determining which applicants and recipients are subject to drug testing.

### **ADMINISTRATIVE IMPLICATIONS**

HSD assumes that additional staff training would be required, especially around determining “individualized suspicion,” new procedures for case management, including application processing, disqualifications, and benefit termination. According to HSD:

“ISD would require one trainer and one policy/contract manager to ensure the proper identification and screening of applicants and recipients. The policy/contract manager would also track referrals for rehabilitation services based on the results from the screening.

Six Family Assistance Analysts in ISD’s largest offices would be required to provide local oversight, hearings and agency conferences, referrals and treatment monitoring. The workload increase would be impacted statewide; however, the largest offices may require these additional FTE due to the volume.

Termination and denials of benefits are subject to challenge through the fair hearings process. New denials or termination would increase the caseload of the fair hearings bureau, and HSD estimates the need for two Fair Hearing Administrative Law Judges for the additional workload. Specifically, HSD states: “the Department would incur additional costs for handling such appeals, including attorney time, employee time in the hearings bureau and elsewhere needed to prepare the administrative record for the courts, contractual services for transcribing hearing records. Investigations required if a client submits suspected false documentation, such as a forged prescription, which may lead to increased intentional program violation (IPV) administrative disqualification hearings; and processing any additional claims that can result from the above circumstances to recover overpayments from clients involved in drug abuse activity.”

Current regulation makes HSD responsible for assisting applicants in the eligibility process, including obtaining any documentation required for eligibility. Given this regulation, and without changes to it, HSD is uncertain whether the department would be required to assist with the transportation costs to complete the drug testing process.

Several other states have considered similar drug testing requirement for applicants or recipients of public assistance. Legislation has been introduced and considered in Kansas, West Virginia, Minnesota, among others. In 2009, Arizona implemented a new law requiring applicants to answer three questions about drug use. Responses to those questions help determine “reasonable cause” for drug testing, for which the state pays.

Maryland screens all TANF cash assistance applicants for substance abuse by a Substance Abuse

Treatment Specialist (SATS) and tests only if the SATS evaluation directs that be done. They are sent to treatment if found positive for substance abuse. They also perform a mental health screening, if needed. Assistance is not denied as long as the person cooperates with all screening, testing and/or treatment requirements.

Indiana, Massachusetts, Minnesota, New Jersey, Wisconsin, and Virginia test only convicted felons or parolees for substance abuse when considering eligibility for some public assistance programs.

**CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

SB 263 requires drug testing for unemployment compensation at the Workforce Solutions Department. HSD suggests that agency cooperation on drug testing of the same clients could save money, if the bills are amended to allow the cooperation.

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