2015 ASSEMBLY BILL 191

April 24, 2015 - Introduced by Representatives ROHRKASTE, KNODL, JAGLER, GANNON, A. OTT, MURPHY, R. BROOKS, KERKMAN, QUINN, T. LARSON, EDMING, MACCO, PETERSEN, KLEEFISCH, KAPENGA, BALLWEG and KREMER. Referred to Committee on Public Benefit Reform.

AN ACT to amend 49.159 (1) (a) (intro.) and 49.36 (3) (a); and to create 20.435 (4) (bq), 20.437 (2) (em), 49.162, 49.163 (2) (am) 7., 49.36 (3m) and 49.79 (9) (d) of the statutes; relating to: requiring drug testing and treatment for eligibility for certain work experience programs; requiring the Department of Health Services to request a waiver to screen and, if indicated, test and provide treatment to FoodShare employment and training participants for illegal use of a controlled substance; and making an appropriation.

Analysis by the Legislative Reference Bureau

Under current law, the Department of Children and Families (DCF) administers various work experience programs. The Transform Milwaukee Jobs program in Milwaukee County and the Transitional Jobs program outside of Milwaukee County provide work experience for unemployed individuals by providing a subsidy for wages and other employment expenses to employers that employ the individuals. Under the Wisconsin Works (W-2) program, DCF may provide job search assistance, placement in a subsidized job, or a stipend for up to four months to a noncustodial parent who would be eligible for W-2 except that he or she is not a custodial parent, if the noncustodial parent is subject to a child support order and the custodial parent of the noncustodial parent’s child is a participant in W-2. Also under current law, DCF may contract with any county, tribal governing
body, or W−2 agency to administer a work experience and job training program for noncustodial parents who have failed to pay child support due to unemployment or underemployment. Such individuals may be ordered by a court to register for a work experience and job training program.

This bill requires every individual who applies to participate in the Transform Milwaukee Jobs program or the Transitional Jobs program, who applies for W−2 services and benefits for noncustodial parents, or who applies for or is ordered by a court to register for a work experience and job training program (all four programs collectively, a program), to complete a questionnaire that screens for the abuse of a controlled substance. If, based on the answers to the questionnaire, DCF or the agency with which DCF has contracted to administer a program determines that there is a reasonable suspicion that an individual who is otherwise eligible for a program is abusing a controlled substance, the individual must undergo a test for the use of a controlled substance. If the test results are positive and the individual does not present satisfactory evidence that he or she has a valid prescription for the controlled substance, to remain eligible for a program the individual must participate in substance abuse treatment, the cost of which is paid by DCF. While the individual is undergoing treatment, he or she must submit to random testing for the use of a controlled substance, and the test results must be negative, or positive with evidence of a valid prescription, for the individual to remain eligible for a program. If any test results are positive and the individual does not have a valid prescription, the individual may begin treatment again one time and will remain eligible for a program as long as all test results are negative, or positive with a valid prescription. If the individual completes treatment and tests negative, or positive with a valid prescription, for the use of a controlled substance at the completion of treatment, he or she will have satisfactorily completed the substance abuse screening and testing and treatment requirements for the program.

Under current law, the federal food stamp program, now known as the Supplemental Nutrition Assistance Program (SNAP) and called FoodShare in this state, assists eligible low−income individuals to purchase food. SNAP benefits are paid entirely with federal moneys. The cost of administration is split between the federal and state governments. The program is administered in this state by the Department of Health Services (DHS). Under current law, DHS may require a recipient of SNAP benefits who is able and who is 18 to 60 years of age to participate in the FoodShare employment and training program (FSET) to be eligible for SNAP benefits, unless the recipient is participating in a Wisconsin Works employment position, is the caretaker of a child under the age of six years, or is enrolled at least half time in school or in a training program or an institution of higher education.

This bill requires DHS to submit to the secretary of the federal Department of Agriculture a request for a waiver that would authorize DHS to screen and, if indicated, test and treat participants in the FSET program who are childless adults for use of a controlled substance without a valid prescription for the controlled substance. The waiver must include certain provisions regarding testing procedures, treatment, and eligibility for continued participation in the FSET program. If the waiver is approved, DHS must submit a plan, consistent with the
ASSEMBLY BILL 191

approved waiver, to the joint committee on finance (JCF) for approval. The plan must also include a cost estimate for state-sponsored treatment. If JCF approves the plan, DHS must then screen and, if indicated, test and treat FSET participants who are childless adults for use of a controlled substance without a valid prescription for the controlled substance. The bill also requires that if the waiver is approved in the 2015–17 fiscal biennium, DHS must address any future fiscal impact resulting from the requirements in its biennial budget request for the 2017–19 fiscal biennium.

For further information see the state fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 20.005 (3) (schedule) of the statutes: at the appropriate place, insert the following amounts for the purposes indicated:

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<tr>
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<th>2015-16</th>
<th>2016-17</th>
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<tbody>
<tr>
<td>20.435 Health services, department of</td>
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<td>(4) Health care access and accountability</td>
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<td>(bq) Substance abuse treatment costs GPR B</td>
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SECTION 2. 20.435 (4) (bq) of the statutes is created to read:

20.435 (4) (bq) Substance abuse treatment costs. Biennially, the amounts in the schedule to pay substance abuse treatment costs under s. 49.79 (9) (d).

SECTION 3. 20.437 (2) (em) of the statutes is created to read:

20.437 (2) (em) Substance abuse treatment costs. Biennially, the amounts in the schedule to pay substance abuse treatment costs under s. 49.162.

SECTION 4. 49.159 (1) (a) (intro.) of the statutes is amended to read:
49.159 (1) (a) (intro.) An individual who would be eligible under s. 49.145 except that the individual is the noncustodial parent of a dependent child is eligible for services and benefits under par. (b) if the individual is subject to a child support order, the individual satisfies all of the requirements related to substance abuse screening, testing, and treatment under s. 49.162 that apply to the individual, and any of the following applies to the custodial parent of the dependent child:

SECTION 5. 49.162 of the statutes is created to read:

49.162 Substance abuse screening and testing for certain work experience programs. (1) In this section:

   (a) “Administering agency” means the department or an agency with which the department contracts to administer a program.

   (b) “Controlled substance” has the meaning given in s. 961.01 (4).

   (c) “Program” means any of the following:

   1. Services and benefits under s. 49.159 (1) (b).

   2. The Transform Milwaukee Jobs program or the Transitional Jobs program under s. 49.163.

   3. A work experience and job training program under s. 49.36.

(2) In order to participate in a program, an individual shall complete a controlled substance abuse screening questionnaire. If, on the basis of answers to the questionnaire, the administrating agency determines that there is a reasonable suspicion that an individual who is otherwise eligible for a program is abusing a controlled substance, the administrating agency shall require the individual to undergo a test for the use of a controlled substance. If the individual refuses to submit to a test, the individual is not eligible to participate in a program until the
individual complies with the requirement to undergo a test for the use of a controlled
substance.

(3) If an individual who undergoes a test under sub. (2) tests negative for the
use of a controlled substance, or tests positive for the use of a controlled substance
but presents evidence satisfactory to the administering agency that the individual
possesses a valid prescription for each controlled substance for which the individual
tests positive, the individual will have satisfactorily completed the substance abuse
testing requirements under this section.

(4) (a) If an individual who undergoes a test under sub. (2) tests positive for the
use of a controlled substance without presenting evidence of a valid prescription as
described in sub. (3), the administering agency shall require the individual to
participate in substance abuse treatment to remain eligible to participate in a
program. If the individual refuses to participate in substance abuse treatment, the
individual is not eligible to participate in a program until the individual complies
with the requirement to participate in substance abuse treatment.

(b) During the time that an individual is receiving substance abuse treatment
under par. (a), the administering agency shall require the individual to undergo
random testing for the use of a controlled substance. For the individual to remain
eligible for a program, the individual must cooperate with the testing and the results
of the tests must be negative or, if any results are positive, the individual must
present evidence of a valid prescription as described in sub. (3). If the results of any
test during treatment are positive for the use of a controlled substance and the
individual does not present evidence of a valid prescription for the controlled
substance, the individual shall have the opportunity to begin the treatment again
one time, as determined by the administering agency. If the individual begins the
substance abuse treatment again, he or she shall remain eligible for a program as long as the results of all tests for the use of a controlled substance during the subsequent treatment are negative for the use of a controlled substance or, if any results are positive, the individual presents evidence of a valid prescription for the controlled substance.

(c) If an individual receiving treatment under par. (b) completes treatment and, at the conclusion of the treatment, tests negative for the use of a controlled substance or presents evidence of a valid prescription for any controlled substance for which the individual tests positive, the individual will have satisfactorily completed the substance abuse testing requirements under this section.

(5) The department shall manage the costs and reinvest the savings under this section, and shall work with the administering agency, if different from the department, to manage the costs and reinvest the savings.

(6) The department shall pay substance abuse treatment costs under this section from the appropriation under s. 20.437 (2) (em). If treatment costs exceed the moneys available under s. 20.437 (2) (em), the department shall request the joint committee on finance to take action under s. 13.101. The requirement of a finding of emergency under s. 13.101 (3) (a) 1. does not apply to such a request.

SECTION 6. 49.163 (2) (am) 7. of the statutes is created to read:

49.163 (2) (am) 7. Satisfy all of the requirements related to substance abuse screening, testing, and treatment under s. 49.162 that apply to the individual.

SECTION 7. 49.36 (3) (a) of the statutes is amended to read:

49.36 (3) (a) Except as provided in par. (f) and subject to sub. (3m), a person ordered to register under s. 767.55 (2) (am) shall participate in a work experience program if services are available.
SECTION 8. 49.36 (3m) of the statutes is created to read:

49.36 (3m) A person is not eligible to participate in a program under this section unless the person satisfies all of the requirements related to substance abuse screening, testing, and treatment under s. 49.162 that apply to the individual.

SECTION 9. 49.79 (9) (d) of the statutes is created to read:

49.79 (9) (d) 1. The department shall request from the secretary of the federal department of agriculture a waiver to permit the department to screen and, if indicated, test and treat, as specified by the department in the waiver request, participants in an employment and training program under this subsection who are childless adults for use of a controlled substance without a valid prescription for the controlled substance. The waiver request shall include at least all of the following elements:

a. Only participants for whom there is a reasonable suspicion of use of a controlled substance without a valid prescription for the controlled substance may be subjected to testing. The waiver shall include mechanisms for the determination of a reasonable suspicion to require submission to a drug test.

b. If a participant tests negative for use of a controlled substance, or tests positive for the use of a controlled substance but presents evidence satisfactory to the department that the individual possesses a valid prescription for each controlled substance for which the individual tests positive, the individual will have satisfactorily completed the substance abuse testing requirements under this subsection.

c. If a participant tests positive for use of a controlled substance for which he or she does not have a valid prescription, then the individual must participate in
state-sponsored substance abuse treatment to remain eligible for the employment and training program.

d. While participating in state-sponsored treatment, an individual who has tested positive for the use of a controlled substance without a valid prescription for the controlled substance, shall submit to random testing for the use of a controlled substance, and the test results must be negative, or positive with evidence of a valid prescription, in order for the individual to remain eligible for the employment and training program under this subsection. If a test result is positive and the individual does not have a valid prescription for the controlled substance for which the individual tests positive, the individual may begin treatment again one time and will remain eligible for the employment and training program. If the individual completes treatment and tests negative for use of a controlled substance, or tests positive for the use of a controlled substance but presents evidence satisfactory to the department that the individual possesses a valid prescription for each controlled substance for which the individual tests positive, the individual will have satisfactorily completed the substance abuse screening and testing requirements under this subsection.

2. If a waiver under subd. 1. is granted and in effect, the department shall submit to the joint committee on finance for approval a plan, consistent with the approved waiver, for the screening, testing, and treatment of participants in an employment and training program under this subsection who are childless adults for the use of a controlled substance without a valid prescription for the controlled substance. The plan shall include a cost estimate for providing state-sponsored substance abuse treatment under the plan.
3. If the joint committee on finance approves the plan for screening, testing, and
treatment under subd. 2., the department shall screen and, if indicated, test and
treat, in a manner approved in the waiver granted by the secretary of the federal
department of agriculture, participants in an employment and training program
under this subsection who are childless adults for use of a controlled substance
without a valid prescription for the controlled substance.


(1) Requirements for FoodShare employment and training program drug
screening. If, during the 2015–17 fiscal biennium, the secretary of the federal
department of agriculture approves the waiver requested under section 49.79 (9) (d)
1. of the statutes, as created by this act, the department of health services shall
address, in the department’s biennial budget request under section 16.42 of the
statutes for the 2017–19 fiscal biennium, any future fiscal impact resulting from
actions taken under section 49.79 (9) (d) 3. of the statutes, as created by this act.

SECTION 11. Initial applicability.

(1) Screening and testing under certain work programs. The treatment of
sections 20.437 (2) (em), 49.159 (1) (a) (intro.), 49.162, 49.163 (2) (am) 7., and 49.36
(3) (a) and (3m) of the statutes first applies to individuals who apply to participate
in a program under section 49.159 (1), 49.163, or 49.36 of the statutes, or who register
for a program under section 49.36 of the statutes, on the effective date of this
subsection.

SECTION 12. Effective date.

(1) This act takes effect on the day after publication, or on the 2nd day after
publication of the 2015–17 biennial budget act, whichever is later.

(END)