



State of Wisconsin  
2017 - 2018 LEGISLATURE

LRB-1495/P2  
EHS:wlj&klm

DOA:.....Bong, BB0273 - Substance abuse screening and testing in  
Wisconsin Works

**FOR 2017-2019 BUDGET -- NOT READY FOR INTRODUCTION**

**AN ACT ...; relating to:** the budget.

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*Analysis by the Legislative Reference Bureau*

**HEALTH AND HUMAN SERVICES**

**WISCONSIN WORKS**

Under current law, every individual who applies to participate in certain work experience programs administered by DCF is required 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, the individual must participate in substance abuse treatment to remain eligible for a program. 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.

This bill eliminates reference to the questionnaire for screening controlled substance abuse and instead allows DCF to determine the appropriate mechanism by which to screen applicants. The bill also exempts from the controlled substances screening and testing requirements a custodial parent of a child who is eight weeks old or less, a woman with a high-risk pregnancy, a W-2 participant who moves to an unsubsidized job and receives only case management services, and a dependent child.

Under current law, the controlled substances screening and testing requirements apply to an individual who applies for 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. This bill adds the following W-2 work experience programs for custodial parents to the programs to which the screening and testing requirements apply: the Temporary Employment Match program, which provides a subsidy for wages to an individual's employer, and the Community Service Jobs program and Transitional Placement program, both of which provide a participant with a monthly grant. With respect to an individual applying for a W-2 program, the bill also applies the screening, testing, and treatment requirements to all adult members of an individual's W-2 group whose income or assets are included in determining the individual's eligibility for a program.

Also under the bill, an individual applying for a community service job or a transitional placement is eligible for the monthly grants under those programs even if the individual or his or her group member tests positive for the use of a controlled substance without presenting evidence of a valid prescription and refuses to participate in substance abuse treatment or the individual or his or her group member fails to cooperate with the testing or treatment requirements. However, the bill requires DCF to reduce the monthly grant and pay it not to the individual but to a protective payee who must hold the money and use it exclusively on behalf of the individual's dependent children. The bill limits this partial eligibility to 12 months or until the individual again becomes eligible for full participation in a W-2 program, if sooner. The bill requires DCF to promulgate rules to establish and implement the monthly grant eligibility and the protective payee structure.

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

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

**SECTION 1.** 49.162 (1) (bg) of the statutes is created to read:

49.162 (1) (bg) “Controlled substance abuse screening” means a questionnaire, a criminal background check, or any other controlled substance abuse screening mechanism identified by the department by rule.

**SECTION 2.** 49.162 (1) (bm) of the statutes is created to read:

49.162 (1) (bm) “Dependent child” has the meaning given in s. 49.141 (1) (c).

**SECTION 3.** 49.162 (1) (br) of the statutes is created to read:

49.162 (1) (br) “Group member” means an adult member of an individual’s Wisconsin Works group whose income or assets are included in determining the individual’s eligibility for a program.

**SECTION 4.** 49.162 (1) (c) 4. of the statutes is created to read:

49.162 (1) (c) 4. A Wisconsin Works employment position.

**SECTION 5.** 49.162 (1) (e) of the statutes is created to read:

49.162 (1) (e) “Wisconsin Works” has the meaning given in s. 49.141 (1) (p).

**SECTION 6.** 49.162 (1) (f) of the statutes is created to read:

49.162 (1) (f) “Wisconsin Works employment position” has the meaning given in s. 49.141 (1) (r).

**SECTION 7.** 49.162 (1) (g) of the statutes is created to read:

49.162 (1) (g) “Wisconsin Works group” has the meaning given in s. 49.141 (1) (s).

**SECTION 8.** 49.162 (2) of the statutes is renumbered 49.162 (2) (a) and amended to read:

49.162 (2) (a) ~~Beginning on the effective date of the rules promulgated under sub. (7), or on the effective date of the emergency rules promulgated under 2015 Wisconsin Act 55, section 9106 (2e), whichever is earlier, Except as provided in sub. (2m),~~ in order to participate in a program, an individual who applies to participate

in a program or who registers for a program under sub. (1) (c) 3., and, with respect to an individual applying for a program under sub. (1) (c) 4., all of the individual's group members shall complete —a— controlled substance abuse screening questionnaire. If, on the basis of ~~answers to the questionnaire~~ the screening results, the administering agency determines that there is a reasonable suspicion that an individual who is otherwise eligible for a program or any of the individual's group members is abusing a controlled substance, the administering agency shall require the individual or group member to undergo a test for the use of a controlled substance. If

(b) Except as provided in sub. (4m), if the individual or group member refuses to submit to a test under par. (a), the individual is not eligible to participate in a program until the individual or group member complies with the requirement to undergo a test for the use of a controlled substance.

**SECTION 9.** 49.162 (2m) of the statutes is created to read:

49.162 (2m) (a) The screening and testing requirements under sub. (2) do not apply to an individual if the individual is any of the following:

1. A custodial parent of a child who is 8 weeks old or less.
2. A woman who is in a pregnancy that is medically verified and that is shown by medical documentation to be at risk.
3. A participant in a Wisconsin Works employment position who moves to an unsubsidized employment position and receives case management services under s. 49.1475.
4. A dependent child.

(b) The screening and testing requirements under sub. (2) do not apply to a group member if the group member is any of the following:

1. A custodial parent of a child who is 8 weeks old or less.
2. A woman who is in a pregnancy that is medically verified and that is shown by medical documentation to be at risk.
3. Specified as exempt from the screening and testing requirements by department rule.

**SECTION 10.** 49.162 (3) of the statutes is amended to read:

49.162 (3) If an individual or group member 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 or group member possesses a valid prescription for each controlled substance for which the individual or group member tests positive, the individual or group member will have satisfactorily completed the substance abuse testing requirements under this section.

**SECTION 11.** 49.162 (4) (a) of the statutes is amended to read:

49.162 (4) (a) If an individual or group member 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 or group member to participate in substance abuse treatment to remain eligible to participate in a program. If the individual or group member refuses to participate in substance abuse treatment, the individual is not eligible to participate in a program until the individual or group member complies with the requirement to participate in substance abuse treatment.

**SECTION 12.** 49.162 (4) (b) of the statutes is amended to read:

49.162 (4) (b) During the time that an individual or group member is receiving substance abuse treatment under par. (a), the administering agency shall require

the individual or group member to undergo random testing for the use of a controlled substance. ~~For Except as provided in sub. (4m), for~~ the individual to remain eligible for a program, the individual or his or her group member must cooperate with the testing and the results of the tests must be negative or, if any results are positive, the individual or group member 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 or group member does not present evidence of a valid prescription for the controlled substance, the individual or group member shall have the opportunity to begin the treatment again one time, as determined by the administering agency. ~~If Except as provided in sub. (4m), if~~ the individual or group member begins the substance abuse treatment again, ~~he or she shall remain~~ the individual remains 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 or group member presents evidence of a valid prescription for the controlled substance.

**SECTION 13.** 49.162 (4) (c) of the statutes is amended to read:

49.162 (4) (c) If an individual or group member 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 or group member tests positive, the individual or group member will have satisfactorily completed the substance abuse testing requirements under this section.

**SECTION 14.** 49.162 (4m) of the statutes is created to read:

49.162 (4m) (a) If an individual applying for a community service job under s. 49.147 (4) or a transitional placement under s. 49.147 (5) or his or her group member 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), and refuses to participate in substance abuse treatment under sub. (4) (a) or if the individual or his or her group member fails to cooperate with the testing or treatment requirements under sub. (4) (b), the individual remains eligible only for the monthly grant portion of the community service job or transitional placement under s. 49.148 (1) (b) or (c) and only to the extent described in par. (b).

(b) 1. In determining the monthly grant for which an individual is eligible under par. (a), the department shall reduce the amount that would otherwise have been established under s. 49.148 (1) (b) or (c) by an amount that reflects the fact that the monthly grant is to be used exclusively for the benefit of the individual's dependent children and not for the benefit of the individual.

2. If an individual is eligible for a monthly grant under the circumstances described in par. (a), the department shall pay the monthly grant through a protective payee structure, under which the monthly grant is paid to a protective payee who is not the individual and who holds the money and uses it exclusively for the benefit of the individual's dependent children.

3. An individual's partial eligibility under par. (a) ends on the earlier of the following dates:

a. The date on which the individual again becomes eligible for full participation in a Wisconsin Works employment position.

b. Twelve months after the date on which the individual or his or her group member meets the circumstances described under par. (a), as determined by the department.

**SECTION 15.** 49.162 (7) of the statutes is amended to read:

49.162 (7) The department shall promulgate rules to implement the substance abuse screening, testing, and treatment requirements under this section and the monthly grant eligibility and protective payee structure under sub. (4m).

**SECTION 9106. Nonstatutory provisions; Children and Families.**

(1) WISCONSIN WORKS CONTROLLED SUBSTANCE SCREENING AND TESTING.

(a) Using the procedure under section 227.24 of the statutes, the department of children and families may promulgate the rules required under section 49.162 (7) of the statutes for the period before the effective date of the permanent rule promulgated under section 49.162 (7) of the statutes but not to exceed the period authorized under section 227.24 (1) (c) of the statutes, subject to extension under section 227.24 (2) of the statutes. Notwithstanding section 227.24 (1) (a), (2) (b), and (3) of the statutes, the department is not required to provide evidence that promulgating a rule under this paragraph as an emergency rule is necessary for the preservation of the public peace, health, safety, or welfare and is not required to provide a finding of emergency for a rule promulgated under this paragraph.

(b) The department of children and families shall present the statement of scope of any emergency rules promulgated under paragraph (a) to the governor for approval under section 227.135 (2) of the statutes no later than the 120th day after the effective date of this paragraph.

**SECTION 9306. Initial applicability; Children and Families.**



(1) WISCONSIN WORKS CONTROLLED SUBSTANCE SCREENING AND TESTING. The treatment of sections 49.162 (1) (bg), (3), (4) (a), (b), and (c), (4m), and (7) of the statutes first applies to an individual who applies to participate in a program or who registers for a program under section 49.162 (1) (c) 3. of the statutes or, with respect to an individual who applies to participate in a program under section 49.162 (1) (c) 4. of the statutes, to the individual's group members on the effective date of the rules promulgated under section 49.162 (1) (7) to implement the changes made by this act or on the effective date of the emergency rules promulgated under SECTION 9106 (1) (a) of this act, whichever is earlier.

**(END)**