



Legislative Fiscal Bureau

One East Main, Suite 301 • Madison, WI 53703 • (608) 266-3847 • Fax: (608) 267-6873
Email: fiscal.bureau@legis.wisconsin.gov • Website: <http://legis.wisconsin.gov/lfb>

May 23, 2017

Joint Committee on Finance

Paper #203

Wisconsin Works Drug Testing and Treatment (Children and Families -- Economic Support and Child Care)

[LFB 2017-19 Budget Summary: Page 100, #3]

CURRENT LAW

Wisconsin Works (W-2) is a work-based program administered by the Department of Children and Families (DCF) providing training and support services to assist low-income parents to obtain permanent and stable employment. Pursuant to contracts, local W-2 agencies administer the program and help applicants participate in work preparation activities, find or keep jobs, and pay for the costs of maintaining employment.

Participants in W-2 are assigned by the local W-2 agency to either unsubsidized employment or a subsidized W-2 employment position. In order to be eligible for a W-2 employment position for any month, an individual must meet certain financial and nonfinancial eligibility requirements. The most common subsidized employment positions (placements) under W-2 are community service jobs (CSJ) and W-2 transitional placements (W2T).

Consistent with federal law, individuals applying for a W-2 placement or job access loan must state in writing whether they have been convicted of a felony that has as an element possession, use, or distribution of a controlled substance. If a participant in a CSJ or transitional placement was convicted in any state or federal court of such a felony within five years of applying for a W-2 employment position, the W-2 agency must require the individual to submit to a test for use of a controlled substance as a condition of continued eligibility.

If the test results are positive, the W-2 agency must decrease the pre-sanction benefit amount for that participant by up to 15% for at least 12 months, or for the remainder of the participant's period of participation in the employment position, if less than 12 months. If, at the end of 12 months, the individual is still a participant in the employment position and submits to another test for the use of controlled substances, and if the results of the test are negative, the full

benefit amount must be restored. The W-2 agency may require an individual who tests positive for use of a controlled substance to participate in a drug abuse evaluation, assessment, and treatment program as part of the work or education and training requirements for that employment position. These provisions have been in effect since the implementation of the W-2 program in 1997.

In addition to the drug testing provisions for W-2 applicants convicted of a drug related felony, 2015 Act 55 provided substance abuse screening, testing, and treatment as an eligibility requirement for three work experience programs administered by DCF: (a) W-2 services for non-custodial parents, including W-2 temporary employment match program (TEMP) placements and stipends; (b) the Transform Milwaukee and Transitional Jobs programs; and (c) the Children First child support program. Act 55 created an annual appropriation and provided \$250,000 GPR for drug screening, testing, and treatment costs. DCF is required to pay for all costs of substance abuse treatment not otherwise covered by medical assistance, private insurance, or another type of coverage.

All new participants for these three work experience programs are required to complete a questionnaire that screens for the abuse of a controlled substance. Based on the answers to the questionnaire, if DCF (or the agency with which DCF has contracted to administer the work experience program) determines that there is a reasonable suspicion that a participant who is otherwise eligible for a work program is abusing a controlled substance, the participant will have to undergo a test for the use of a controlled substance in order to remain eligible.

Screening questionnaires have been incorporated into application procedures for DCF's work experience programs. DCF has approved two screening questionnaires: (a) a four-question portion of the screening tool used to assess drug use barriers to employment in the W-2 program; and (b) a ten-question form used in Transform Milwaukee since November, 2015, and in Children First since March, 2016. Three affirmative responses on the questionnaire will trigger the requirement for drug testing.

If the drug test is negative for the use of a controlled substance, the applicant will remain eligible to participate in the work programs. If the applicant refuses to submit to a test, the applicant will not be eligible until the applicant complies with the requirement to undergo a test for the use of a controlled substance. If the test is positive for use of a controlled substance without a valid prescription, then the applicant must participate in substance abuse treatment to remain eligible.

While undergoing treatment, a participant 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, in order for the participant to remain eligible. If any test results are positive and the participant does not have a valid prescription, the participant may restart treatment one time and remain eligible so long as all subsequent test results are negative or positive with a valid prescription. An additional failed test results in the participant becoming ineligible for 12 months.

GOVERNOR

Require controlled substance screening, testing, and treatment as a condition of eligibility for W-2 employment positions, as described below. It is estimated that the costs of these activities would be absorbable under existing appropriations.

The bill would replace the requirement for screening via a questionnaire with "controlled substance abuse screening," which would mean a questionnaire, a criminal background check, or any other controlled substance abuse screening mechanism identified by DCF by rule. As a result, DCF would be able to specify alternative screening methods.

The bill would apply the above controlled substances screening, testing, and treatment eligibility requirements for work experience programs to applicants of the following W-2 placements: (a) TEMP; (b) CSJ; and (c) transitional placements. However, controlled substance screening and testing eligibility requirements would not apply if an individual is: (1) a custodial parent of child younger than eight weeks old; (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 W-2 employment position who moves to unsubsidized employment and receives case management services; or (4) a dependent child.

The bill would apply the controlled substances screening, testing, and treatment eligibility requirements for W-2 positions to all adult members of an applicant's W-2 group whose income or assets are included in determining the individual's eligibility for W-2 employment positions. As a result, an individual would not be eligible for a W-2 employment position unless that individual and all adult group members satisfy the screening, testing, and treatment eligibility requirements. However, the screening and testing requirements would not apply if an individual is: (a) a custodial parent of child younger than eight weeks old; (b) a woman who is in a pregnancy that is medically verified and that is shown by medical documentation to be at risk; or (c) specified as exempt under rules promulgated by DCF.

The bill would specify that if an applicant for a W-2 employment position or any of the applicant's group members fails to satisfy the screening, testing, or treatment eligibility requirements, then the applicant would remain partially eligible for monthly grants under a CSJ or transitional placement. However, DCF would be required to pay the monthly grant to a protective payee. The protective payee would have to hold the money and use it exclusively for the benefit of the applicant's dependent children. DCF would reduce the monthly grant to reflect that the monthly grant is to be used exclusively for the dependent children. The applicant would remain partially eligible for 12 months or, if earlier, the date on which the applicant becomes eligible for full participation in a W-2 employment position (such as by complying with controlled substance screening, testing, and treatment eligibility requirements).

Finally, the bill would authorize DCF to promulgate emergency rules to implement and establish the protective payee structure and monthly grant eligibility under CSJ and transitional placements without the finding of an emergency. DCF would be required to submit a statement of scope of proposed emergency rules within 120 days of the bill's effective date. The drug screening, testing, and treatment provisions would first apply to applicants for W-2 employment positions on the effective date of the permanent rules or emergency rules promulgated by DCF,

whichever is earlier.

DISCUSSION POINTS

1. Identical substance abuse screening, testing, and treatment provisions have been introduced as separate legislation in 2017 Assembly Bill 242. The Committee on Public Benefit Reform recommended passage of Assembly Bill 242, as amended by Assembly Amendment 2, during its executive session on April 20, 2017, by a vote of five to three. On May 10, 2017, the Assembly adopted Assembly Amendment 2 on a voice vote, and passed the bill, as amended, on a vote of 62 to 35.

2. As noted, the bill would modify the current law requirement for DCF to use a questionnaire to a "controlled substance abuse screening." DCF would be able to use other screening methods to refer an individual for drug testing, such as a criminal background check and review of behavioral indicators that may create reasonable suspicion that the individual is illegally using controlled substances. However, DCF has not yet identified a specific alternative screening process or questionnaire that it would use.

3. Currently, the SAMHSA-5 panel urine drug test is administered for all participants in DCF work programs. This test panel includes the five most commonly abused categories of drugs: cocaine, amphetamines, opiates, marijuana, and phenylclidine (PCP). The SAMHSA-5 is commonly used by employers. Under the bill, W-2 agencies would continue to make their own contracts with vendors around the state that conform with the statutory and administrative rules for drug testing. According to DCF, the expected average cost per test is \$25.

4. DCF indicates that similar to the drug testing under current law, the results of drug testing for CSJ, TEMP, and transitional placements would remain confidential. Federal privacy rules under the Health Insurance Portability and Accountability Act of 1996 restrict the use of treatment-related information for purposes of criminal investigations or prosecution of drug abuse. Test results would not be released without the written consent of the applicant or participant. W-2 staff are statutorily required to report child abuse or neglect to child protective services or local law enforcement if they have reasonable cause to suspect that a child seen in the course of their professional duties has been abused or neglected or is likely to be abused or neglected. According to DCF, a positive drug test alone would not require a child protective services referral.

5. Drug treatment under the bill for CSJ, TEMP, and transitional placements would be the same as under current law for work experience programs. Per administrative rule, treatment programs include medically managed inpatient services operated by a hospital, medically monitored treatment services operated under the supervision of a physician, medically monitored day treatment services and outpatient treatment services, transitional residential treatment services, and narcotic treatment services for opiate addiction, all of which are regulated by the Department of Health Services.

6. In her testimony before the Joint Committee on Finance, the DCF Secretary stated that Wisconsin is in the midst of a drug epidemic fueled by abuse of heroin, other opioids, and methamphetamines. The Secretary suggested that expanding the current drug testing requirements

in DCF work programs could serve as an additional point where the government could help identify families needing drug treatment services. The Secretary further indicated that training, work experience, education, and case management are not sufficient to achieve the goal of making participants employable if the participant is unable to pass an employer's drug test. Thus, drug testing could serve an important role in state work programs to ensure that participants can obtain and maintain family-sustaining employment upon completion of their training.

7. The Committee could approve the Governor's recommendation to expand drug testing in the W-2 program without modification (Alternative 1). The administration indicates that the drug screening, testing, and treatment requirements are intended to assist work program participants in becoming employable (and thereby enable them to support their families) and to reduce the traumatic effect on children of drug abuse by their participating parents. The Governor's proposal could also help to ensure that public funds are used for their intended purpose: to support families in need and not to support drug use.

8. The Committee could also provide for a technical change with respect to the provisions related to the protective payee to clarify that the monthly grant must be used for the exclusive benefit of all dependent children in the W-2 workgroup and not just "the individual's dependent children" (Alternative 2). This would ensure that the protective payee would not be restricted from using the grant on behalf of all children in the work group and not just for children in the workgroup who related to or legally adopted by the applicant. The Committee on Public Benefit Reform recommended adoption of an identical change in Assembly Amendment 2 to Assembly Bill 242 by a vote of eight to zero.

9. Alternatively, the Committee could find that custodial parent applicants who apply for work programs are no more likely to engage in drug abuse than the general population and that the existing conviction-based drug testing provisions for W-2 applicants are sufficient, and thus decide to delete the Governor's proposal from the bill (Alternative 3).

10. Table 1 shows the results of drug testing for work experience programs under current law through March 17, 2017. A total of nine participants have been referred for drug treatment.

TABLE 1

**Drug Testing of Work Experience Programs under Current Law
(Through March 17, 2017)**

| | <u>Applicants/ Participants</u> | <u>Screened</u> | <u>Referred to Testing</u> | <u>Refused Testing</u> | <u>Referred for Treatment</u> | <u>Refused Treatment</u> | <u>Completed Treatment</u> |
|--|-------------------------------------|-----------------|--------------------------------|----------------------------|-----------------------------------|------------------------------|--------------------------------|
| Transform Milwaukee (since 11/09/15) | 613 | 613 | 18 | 4 | 5 | 1 | 0 |
| W-2 Noncustodial Parent Placements (since 3/1/16) | 43 | 43 | 2 | 0 | 2 | 0 | 0 |
| Children First (since 3/7/16) | 1,082 | 1,081 | 13 | 1 | 1 | 0 | 0 |
| Transitional Jobs (since 7/1/16) | <u>100</u> | <u>100</u> | <u>9</u> | <u>1</u> | <u>1</u> | <u>1</u> | <u>0</u> |
| Total | 1,838 | 1,837 | 42 | 6 | 9 | 2 | 0 |

11. As shown in Table 1, of the total 1,837 persons screened, only 42 were referred to testing (2.3%). Of those referred for drug testing, participants were referred for treatment at a rate of 21.4% (9 of 42). Approximately 35.7% (15 of 42) of participants either refused testing or tested positive for the use of a controlled substance.

12. For comparison, the National Institute on Drug Abuse and Health indicated in its national survey of drug use and health in 2015 that 10.1% of the general population older than 12 years of age used illicit drugs within the preceding month. Of those older than 26, 8.2% used illicit drugs within the preceding month. Of those aged 18 to 25, 22.3% used illicit drugs within the preceding month.

13. As shown in Table 2, the Department of Health Services indicates in the 2016 Wisconsin Epidemiological Profile on Alcohol and Other Drug Use that drug use by persons aged 12 and older in Wisconsin was similar to national trends in 2013 and 2014.

TABLE 2

2013-2014 Wisconsin Drug Use Profile, Age 12 and Older

| | <u>Past Month</u> | | <u>Past Year</u> | |
|--|-------------------|-------------|------------------|-------------|
| | <u>Wisconsin</u> | <u>U.S.</u> | <u>Wisconsin</u> | <u>U.S.</u> |
| Any illicit drugs | 10% | 8% | N.A. | N.A. |
| Marijuana | 8% | 6% | N.A. | N.A. |
| Prescription Pain Relievers (Non-medical purpose) | N.A. | N.A. | 4% | 4% |

N.A. means that data is not available

14. The combined rate of positive drug tests in Table 1 for work experience programs is significantly higher than the drug use profile of the overall general population shown in Table 2, but in line with those aged between 18 and 22 as measured by the 2015 national survey of drug use and health.

15. However, because the drug testing under current law is aimed at non-custodial parents, it is questionable whether the rates of positive drug tests in Table 1 would be applicable to the target population of custodial parents under the bill. Further, the total number of persons tested is not large, and therefore it not clear whether statistically valid conclusions could be drawn from the data for a larger population.

16. A larger set of data can be constructed using programs in other states. According to the National Conference of State Legislatures, at least 15 states have passed legislation regarding drug testing or screening for public assistance (Alabama, Arkansas, Arizona, Florida, Georgia, Kansas, Michigan, Mississippi, Missouri, North Carolina, Oklahoma, Tennessee, Utah, West Virginia and Wisconsin). According to a survey conducted by ThinkProgress, of the 13 states with active testing programs in 2016, these states reported that a total of 2,826 out of approximately 250,000 applicants were tested. Of those tested, 369 tested positive (13%) and at least 767 people (27%) either tested

positive or refused the test (two states do not report refusals).

17. The rates of positive testing and refusals in the 13 states TANF programs in 2016 are slightly higher than the general population in Wisconsin as shown in Table 2, but significantly lower than the rate of drug use measured by the 2015 national survey of drug use and health for those aged between 18 and 22.

18. Because the rate of positive drug tests in Wisconsin work experience programs and in TANF programs in other states suggests that participants are no more likely than the general population to use drugs, it could be argued that it is unlikely that custodial parent applicants for CSJ, TEMP, or transitional placements use drugs at rates higher than the general population. Further, it could be argued that such applicants are no more likely than the general population to be unemployed due to drug abuse or to engage in drug-related child abuse. As a result, it could be argued that there is no need to incur expenses to test such persons for drug use.

19. On the other hand, if those who have refused testing are included into the above statistics, the rate of positive tests increases above that of the general population. It may be the case that some applicants know that a drug test would be positive and thus do not undergo testing or strategically time their application to avoid detection of their drug use. As a result, the actual rate of drug use could in fact be higher than the statistics for positive drug tests.

Drug Testing - Funding and Costs

20. Current law provides for \$250,000 GPR annually for substance abuse screening, testing, and treatment costs. DCF estimates that the costs of expanded drug screening, testing, and treatment under the bill would be absorbable under current funding levels.

21. DCF's estimate is reasonable for three reasons. First, Medicaid would likely cover most treatment costs under the bill. The income eligibility limit for a W-2 group is 115% of the federal poverty level. Thus, W-2 participants and their families are very likely to be eligible for Medicaid to cover treatment costs.

22. Second, although the administrative workload from drug screenings and testing would increase under the bill, DCF indicates that W-2 agencies would absorb such costs under the existing W-2 contract payment structure. Thus the costs of screening and testing would likely not require an additional appropriation of funding.

23. Third, the overall amount of testing and treatment under the bill is not likely to increase substantially given current W-2 caseloads and the results of drug screening, testing, and treatment shown in Table 1. This is largely due to the projected number of persons referred for testing under the screening requirement. This is readily shown in the following example. DCF indicates that in 2016 there were 13,976 total participants in TEMP, CSJ, and transitional jobs over the course of the year. Assuming that: (a) 75% of those cases would be new placements subject to controlled substance screening, testing, and treatment under the bill; (b) 10% of cases would have other adult family members subject to such requirements; and (c) the rate of controlled substance screening, testing, and treatment shown in Table 1 would apply to the overall W-2 program, it is estimated that approximately 264 participants would be referred for drug testing in a year (2.3%).

Of those referred for testing, approximately 56 would be referred to treatment and 38 would refuse testing under the testing requirements under the bill. At an average cost of \$25 per drug test (approximately \$6,600 in total) and assuming that Medicaid would cover treatment costs, the cost of expansion of controlled substance screening, testing, and treatment under the bill would likely be minimal.

24. For similar reasons it is likely that savings from caseload reductions would be minimal. As discussed above, it is unlikely that the bill would result in a significant number of refusals of drug testing and treatment relative to the overall size of the W-2 program. Further, the protective payee procedure would continue to provide partial eligibility for CSJ and transitional placements for participants who fail the testing and treatment requirements. As a result, it is unlikely that the drug screening, testing, and treatment requirements would result in significant reductions in caseloads.

25. Finally, the costs related to establishing a procedure for protective payees would likely depend on a number of factors, including the policies and procedures implemented by DCF. The bill would provide DCF with rule-making authority to implement protective payees, but DCF has not indicated what specific administrative actions would be required, such as changes in information technology or staffing. Thus, it is not clear at this time whether DCF would need any additional funding to implement protective payees.

ALTERNATIVES

1. Approve the Governor's recommendation.
2. Modify the Governor's recommendation to clarify in the provisions relating to protective payees that the monthly grant must be used for the exclusive benefit of all dependent children in the individual's W-2 workgroup and not just the individual's dependent children.
3. Delete the provision.

Prepared by: John D. Gentry