

DRUG SCREENING AND TESTING

Omnibus Motion
[LFB Papers #216, #355, #370, and #740]

Motion:

Move to modify the bill as follows.

1. *Paper #216 - Work Experience Program Drug Testing and Treatment.* Approve the Governor's recommendations. Create an annual appropriation and provide \$250,000 GPR in 2015-16 and 2016-17 to DCF for drug screening, testing, and treatment costs. Require DCF to pay for all costs of substance abuse treatment not otherwise covered by medical assistance, private insurance, or other type of coverage. Specify that if drug treatment costs exceed the monies available under the appropriation, then DCF must request the Committee to take action under s. 13.101 of the statutes, and that the requirement of an emergency does not apply to such a request.

Authorize DCF to promulgate emergency rules to implement drug screening, testing, and treatment without making a finding of emergency. Require DCF to submit a statement of scope of proposed rules within 120 days of the bill's effective date.

2. *Paper #355 - Drug Screening and Testing for Adults without Dependent Children Enrolled in BadgerCare Plus.* Approve the Governor's recommendations. In addition, require the Department of Health Services (DHS) to submit the following reports to the Joint Committee on Finance:

a. Prior to submitting an amendment to the current childless adults waiver agreement that would permit drug testing, a report that summarizes the provisions and estimates the fiscal effect of that proposed amendment.

b. If the federal Centers for Medicare and Medicaid Services (CMS) approves an amendment to the current childless adults waiver agreement to permit drug testing, and prior to DHS implementing that policy, a report that summarizes the provisions and estimates the fiscal effect of the CMS-approved amendment.

3. *Paper #370 - FoodShare Employment and Training Drug Testing.* Delete the provisions in the bill related to the screening and testing of FoodShare Employment and Training (FSET) participants. Instead, modify the bill to include the following:

a. Require the Department of Health Services (DHS) to promulgate rules to develop and implement a drug screening, testing, and treatment program, which incorporates the provisions of 2015 Assembly Bill 191, as passed by the Assembly, that relate to screening and testing of FSET participants who are able-bodied adults without dependent children who are subject to the

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FoodShare work requirements.

b. Delete any provisions from the bill that would require DHS to submit a waiver request to the U.S. Department of Agriculture, requesting authority to screen and test FSET participants for illegal use of a controlled substance without a valid prescription.

c. Create a biennial GPR appropriation that would authorize DHS to expend the amounts in the schedule to pay substance abuse treatment costs. Provide no funding for this purpose in the 2015-17 biennium.

d. Specify that all FoodShare recipients are considered "welfare recipients" for purposes of 21 USC 862b.

4. *Paper #740 - Drug Testing for Unemployment Insurance Program* Modify the Governor's recommendation regarding drug testing of certain UI claimants as follows:

a. Provide \$250,000 in 2015-16 and delete \$250,000 in 2016-17 to fund substance abuse screening, testing, and treatment to claimants for UI benefits. Under the bill, \$500,000 is provided in 2016-17 under a biennial appropriation for treatment only.

b. Allow DWD to determine by administrative rule, the duration of a claimant's ineligibility for failing to pass a drug test. Under the bill, a claimant's ineligibility would be the latter of 52 weeks or when the claimant files a new claim for UI benefits in the subsequent year.

c. Specify that the rules allow a claimant who is participating in treatment to have at least one more positive test result following the initial test without being considered not to be in full compliance with the requirements of the substance abuse treatment program.

d. Under the DWD drug testing program, specify that the Department charge UI benefit payments for persons in the drug treatment and skills assessment program to the balancing account, rather than the employer account.

e. Clarify that information regarding a UI claimant enrolled in a treatment program is confidential.

f. Require that the results of the initial screening must provide a reasonable suspicion for the claimant to submit to a drug test.

g. Include the administration's erratum to clarify language related to the unlawful use of controlled substances, expired prescriptions and valid prescriptions.

h. Clarify that the Department promulgate rules identifying occupations for which drug testing is regularly conducted in this state and to notify the Secretary of the United States Department of Labor of that information.

i. Under the employer drug test reporting program, specify that the employer require that the employee submit to a test for the presence of controlled substances "as a condition of an offer of

employment," and the prospective employer withdrew the conditional offer after the employee either refused to submit to such a test or tested positive for one or more controlled substances.

j. Specify that DWD may contract with a third-party entity or another state agency to administer a treatment program.

Note:

Work Experience Programs. This motion would provide annual funding of \$250,000 GPR to DCF to support costs associated with drug screening, testing, and treatment of participants of the Transform Milwaukee and Transitional Jobs programs, Children First, and Wisconsin Works services and benefits for non-custodial parents. The motion would also clarify that DCF must pay for the costs of substance abuse treatment, unless otherwise covered by private insurance or medical assistance or other program. Finally, DCF would be provided with emergency rulemaking authority to implement the drug screening, testing, and treatment provisions.

FSET. The FSET program provides education, skills, and work experience to FoodShare participants to obtain competitive employment and enhance earning potential. Under work requirements enacted in 2013 Act 20, FoodShare recipients who are able-bodied adults without dependents (ABAWDs) are required to work, participate in a qualifying employment and training program, or work and participate in a qualifying employment and training program for a minimum of 20 hours per week to maintain eligibility for FoodShare benefits. The work requirements were implemented in Kenosha, Racine, and Walworth counties in July, 2014, and the remainder of the state in April, 2015. The FSET program continues to be available to all FoodShare recipients, but also serves as a means by which ABAWDs can fulfill the work requirements.

The Governor's budget bill would direct DHS to request a waiver to screen and, if indicated, test FSET participants for illegal use of a controlled substance without a valid prescription.

This motion would replace the provisions in the bill with most of the provisions of 2015 AB 191, as passed by the Assembly on May 13, 2015, that relate to drug screening and testing for certain adults without dependent children enrolled in the FSET program. However, this motion would exclude provisions in AB 191 that would require DHS to request a waiver to implement a drug screening, testing, and treatment policy. Instead, DHS would be authorized to promulgate rules to develop and implement a drug screening, testing, and treatment policy, in accordance with provisions of AB 191.

Under this motion, DHS would be required to screen and, if indicated, test and treat childless adults who are subject to FoodShare work requirements participating in FSET for use of a controlled substance without a valid prescription. Under this motion, DHS would be permitted to develop a drug screening and testing policy, which would include at least all of the following elements:

a. Only participants for whom there is reasonable suspicion of use of a controlled substance without a valid prescription may be subject to testing.

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b. If a participant tests negative, or tests positive for the use of a controlled substance but presents evidence satisfactory to DHS 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.

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 FSET.

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 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 individual to remain eligible for FSET. 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 FSET. 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 DHS 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.

The motion would create a biennial GPR appropriation that would authorize DHS to expend the amounts in the schedule to pay substance abuse treatment costs. No funding would be provided in the 2015-17 biennium for this purpose. Finally, the motion would specify that DHS would be required include in its 2017-19 biennial budget to request funding for any future fiscal impact resulting from this proposal.

BadgerCare Plus. The motion would approve the Governor's recommendations to request a waiver from the federal government to implement drug testing and screening requirements on childless adults in BadgerCare Plus. It would also require DHS to submit reports on the proposal both before seeking approval of the policy from the federal government, and after receiving approval, if applicable.

[Change to Bill: \$500,000 GPR]