

Testimony
House Bill 1385 – Department of Human Services
House Human Services Committee
Representative Weisz, Chairman
February 4, 2013

Chairman Weisz, members of the House Human Services Committee, I am Carol Cartledge, Director of the Economic Assistance Policy Division, for the Department of Human Services (Department). I am here today to provide information and request the committee provide clarification on questions the Department has on House Bill 1385. The Department was not able to prepare a fiscal note as the clarifications needed have impacts on the calculation of the expected increase in expenditures that would result from the enactment of this bill.

Supplemental Nutrition Assistance Program (SNAP)

According to Section 5(b) of the Food and Nutrition Act and Section 273.2(a)(1) of the Code of Federal Regulations, the State agency [the agency that administers SNAP; in North Dakota, the Department is the State agency] cannot, as a condition of eligibility, impose additional application or application processing requirements. Mandatory drug testing would impose an additional requirement and is prohibited by federal SNAP regulations. The Department requests that the committee amend the bill to remove the requirement for drug testing as a condition of eligibility for SNAP applicants to avoid creating a conflict between state and federal requirements for SNAP.

If the Legislative Assembly modifies the lifetime disqualification for felony drug convictions as proposed in HB 1176, however, drug testing along with completion of a rehabilitation program may be used as a condition to receiving SNAP benefits for that individual.

Temporary Assistance for Needy Families (TANF)

TANF provides cash assistance to eligible low-income families that include a child, deprived of support of a parent, who is living with a parent or a caretaker relative. The average number of cases monthly is 1,717. Of the 1,717 cases, 39 percent are "child only" cases. This means grandparents or aunts or uncles are receiving a benefit only for the child or children. The remaining cases include a parent or caretaker who must comply with TANF requirements by participating in the Job Opportunity and Basic Skills (JOBS) program.

Through the JOBS program, the parent or caretaker is assessed for barriers to employment, and an employment plan is developed that provides a work plan for the individual to achieve self-sufficiency. If a plan includes a requirement to receive treatment, such as substance abuse treatment, and the individual does not follow-through with the recommended treatment, the individual is sanctioned. A sanction means the TANF benefit is reduced to the amount needed for the child or children only, and if the individual does not resolve the issue within a month, the entire case is closed.

The TANF benefit for a family of three is \$427 per month. For a household to be eligible for TANF benefits, the household income must be at or below 25 percent of the federal poverty level, which is an annual gross income of \$5,124 for a household of three. Disqualifying the adult in a household of three that is made up of one adult and two children, would result in a benefit for the children of \$195 per month.

Questions on House Bill 1385

As noted earlier, due to outstanding questions on House Bill 1385, a fiscal note was not prepared. Upon clarification of the following questions, the Department will be able to prepare a fiscal note.

1. Laws containing language similar to House Bill 1385 have been susceptible to constitutional challenges. Drug testing as a condition of receipt of economic assistance is generally considered a search under the Fourth Amendment. Attached to my testimony are two documents related to this:
 - a. Congressional Research Services report (January 19, 2012).
 - b. A review conducted by the Department's Legal Advisory Unit on challenges to state laws requiring drug testing as an eligibility requirement for receipt of benefits from economic assistance programs.

The Department proposes the committee consider an amendment for a delayed implementation until the current Fourth Amendment challenges are resolved.

2. House Bill 1385 uses the term 'applicants'. Applicants may or may not be eligible for benefits. If an applicant undergoes drug testing but is otherwise determined to be ineligible, would the Department still be expected to reimburse the applicant the cost of the testing? There is no mechanism in the bill to facilitate this type of reimbursement. Would the committee support an amendment to require testing only for applicants who have been determined to be otherwise eligible for TANF rather than all applicants?

3. The Department needs to know what type of drug panel/test is required (blood, urine, etc.) and for which drugs. The cost of a drug test varies depending on the method of testing and the drugs being tested.
4. The bill requires testing to determine if an applicant is engaged in illegal drug use, but doesn't define what would be considered "illegal drug use". It further states that "an individual who tests positive for controlled substances as a result of a drug test required under this section is ineligible to receive" TANF or SNAP benefits. This does not allow the Department to consider whether the reason an applicant tests positive for a controlled substance is the result of medical treatment.

Concerns

TANF is state supervised and county administered. As a requirement of eligibility, county social service agencies would be required to implement this law by referring the individual to a local clinic if one is available. Families applying for TANF have low incomes and may not have reliable transportation to travel to a clinic for a drug test. In addition, since the adult applicant is responsible for paying for the drug test up front, it may be cost prohibitive for households to pay for the test.

There are also concerns about the receipt and retention of the drug test results. To assure appropriate chain of evidence, the county would need to receive the drug test results directly from the clinic or lab. There are also federal and state safeguarding rules that require the results to be received and maintained in a secure area and which define who may receive the results and who may have access to the results. The counties

would need to retain the actual drug test results as the Department would expect these files to be reviewed during routine program audits.

Additionally, confidentiality requirements for drug and alcohol treatment records are governed by 42 CFR Part 2, so allowance would have to be made within the program to ensure that any records relating to an applicant's participation in a treatment program are afforded the confidentiality required under 42 CFR Part 2. This would need to include a process for the county to obtain a release of information to receive treatment records and to redisclose them to the Department and to the Office of Administrative Hearings if necessary.

The bill includes SNAP, and as noted previously, requiring drug testing as a condition of initial eligibility for an applicant to receive SNAP benefits is a violation of federal regulations. If the committee chooses not to remove the requirements for drug testing for SNAP applicants, likely federal penalties would increase the fiscal cost estimate. In addition, due to the Fourth Amendment challenges noted above, the costs of litigation challenging the constitutionality of the legislation may need to be considered in developing a fiscal note.

The Department is willing to assist the committee with any recommended amendments for the bill.

This concludes my testimony and I would be happy to answer any questions.