

ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

1. Type of Estimate and Analysis

Original Updated Corrected

2. Administrative Rule Chapter, Title and Number

DCF 105, Substance Abuse Screening and Testing for Certain Department Work Experience Programs (emergency rule)

3. Subject

Substance abuse screening, testing and treatment for certain department work experience programs.

4. Fund Sources Affected

GPR FED PRO PRS SEG SEG-S

5. Chapter 20, Stats. Appropriations Affected

20.437(2)(em)

6. Fiscal Effect of Implementing the Rule

No Fiscal Effect Increase Existing Revenues Increase Costs
 Indeterminate Decrease Existing Revenues Could Absorb Within Agency's Budget
 Decrease Cost

7. The Rule Will Impact the Following (Check All That Apply)

State's Economy Specific Businesses/Sectors
 Local Government Units Public Utility Rate Payers
 Small Businesses (if checked, complete Attachment A)

8. Would Implementation and Compliance Costs Be Greater Than \$20 million?

Yes No

9. Policy Problem Addressed by the Rule

Implementation of 49.162, as created by 2015 Act 55.

Act 55 requires screening and, if indicated, testing and treatment for use of a controlled substance without a valid prescription as a condition of eligibility for the following DCF work experience programs:

- Transform Milwaukee Jobs (TMJ);
- Transitional Jobs;
- Wisconsin Works (W-2) services and benefits for noncustodial parents (NCPs), including W-2 NCP Trial Employment Match Program (TEMP); and
- Children First (Note: The proposed rule does not apply to Children First).

Every individual who applies to participate in a DCF work experience program must first complete a questionnaire that screens for the abuse of a controlled substance. If answers to the questionnaire reveal a reasonable suspicion that the individual is abusing a controlled substance, the individual must complete a test for the use of a controlled substance. A positive test result will prompt a referral to substance abuse treatment, and the individual must participate in order to maintain program eligibility. Every individual referred to substance abuse treatment will be required to submit to random testing for the use of a controlled substance. 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 as long as all test results are negative. If the individual tests negative following the completion of treatment, substance abuse testing and treatment requirements are considered fulfilled.

10. Summary of the businesses, business sectors, associations representing business, local governmental units, and individuals that may be affected by the proposed rule that were contacted for comments.

DCF solicited comments on the economic effect for DCF 105 permanent rule during the open comment period from October 19, 2015 - November 2, 2015. The following stakeholders were contacted: agencies currently administering the Wisconsin Works program, agencies currently administering the Transform Milwaukee Jobs program, Wisconsin County Departments of Social Services, Wisconsin County Departments of Human Services, Workforce Development Boards,

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Community Action agencies, Child Support agencies, relevant business groups including the Wisconsin Association of Manufacturers and Commerce, and local employers who have employed work experience program participants. The department received two comments. One comment suggested all public assistance recipients should be tested for controlled substances. The second comment, received from a drug treatment provider, disagreed with the underlying statutory requirement and indicated it was a waste of time and resources. Both comments were considered in preparing this fiscal estimate and economic impact analysis.

11. Identify the local governmental units that participated in the development of this EIA. The rules were developed with the assistance of agencies administering the W-2 program under the department's 2013-2016 contracts, agencies administering the Transform Milwaukee Jobs program, the Department of Corrections, the Department of Workforce Development, and the Department of Health Services.

12. Summary of Rule's Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred)

Fiscal and Economic costs associated with implementing §49.162 Stats. as created by 2015 Wis. Act 55 are not driven by the Administrative Rule. Rather, administrative costs are driven by the statutory requirements. DCF does not believe the rule imposes additional costs beyond those necessary to fulfill the requirements of §49.162.

Prior to the enactment of 2015 Wis. Act 55, Wisconsin statutes and administrative rules contained no provisions for screening, testing, and treatment for DCF work experience programs. Approximately 12 states have implemented legislation requiring drug testing and/or treatment for programs similar to W-2. Their experiences suggest that the number of individuals who are referred for testing and treatment is likely to be minimal. Further, the DCF work experience programs impacted by ch. DCF 105 will serve a significantly smaller numbers of participants compared to W-2 placements for custodial parents.

The number of individuals expected to be served annually by DCF work experience programs subject to chapter DCF 105, includes 530 annually in the Transform Milwaukee Jobs (TMJ) Program in Milwaukee County (beginning November 9, 2015); 252 annually in the W-2 program placements for noncustodial parents (beginning January 1, 2016) in Dane County, Milwaukee County and Marathon County; and 209 annually (beginning April 1, 2016) in the Transitional Jobs Program (TJ) in Forest, Langlade, Menominee, Florence, Ashland, Bayfield, Iron, Sawyer, Rusk, Taylor, and Rock (Beloit only) Counties.

Estimated Annual Cost of Administering Questionnaires – At full implementation of all currently funded work experience programs subject to ch. DCF 105, approximately 991 individuals will be screened annually for suspicion of abuse of controlled substances through a questionnaire. The administration of the questionnaire will be incorporated into assessment functions already carried out by agencies administering these programs at no additional cost. The department has approved two questionnaires, the 4-question portion of the barrier screening tool used to assess drug use barriers to employment in the W-2 program and the 10 question DAST-10© that will be used in the TMJ program beginning in November 2015. Administering and scoring these questionnaires will take less than 5 minutes per participant and will not have any added cost.

Estimated Cost of Testing for Use of Controlled Substances – The department's experience in assessing W-2 participants for employment barriers relating to drug abuse, its research on the incidence of drug use in public assistance populations, and the experience of other states carrying out similar screening, testing, and treatment in their TANF programs suggest we can expect a maximum of 5% (50 individuals) to respond to the screening questionnaire as having experienced problems with controlled substances in the previous 12 months. The cost of testing individuals for use of controlled substances is estimated to be \$45 per person, however individuals tested in other state programs, including testing by the

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DOC, will be able to use existing test results to satisfy the testing requirement. Assuming 30 of these individuals will be able to submit a test carried out by another program, the department estimates it will carry out 20 tests, for a total annual cost of \$900.

Estimated Cost of Treatment for Use of Controlled Substances – Over 85% of current participants in the TMJ program are ex-offenders subject to supervision by the Department of Corrections (DOC). DOC participated in planning meetings with the department, and reported only about 6% of probation and parole clients who are routinely subject to random drug testing test positive. This suggests that of the 50 individuals the department estimates to be subject to testing, only 3 will actually test positive for current use of a controlled substance. Since all individuals eligible for the programs administered by DCF have low incomes (150% of FPL or lower), of the 3 individuals likely to test positive for current use of a controlled substance, all are estimated to be eligible either for state and federally-funded community-based drug treatment or for drug treatment reimbursable through Badger Care. As the payer of last resort for the treatment required by §49.162, the department estimates the cost of treatment on an annual basis will be \$0. The fiscal estimate for 2015 Act 55 estimated the cost of treatment to be \$800 per person. The maximum impact, if all individuals are ineligible for other funding, is therefore \$2,400.

Estimated Annual Cost of Screening, Testing, and Treatment for Use of Controlled Substances – Based on the above assumptions, the department estimates to total annual cost of the statute and rule to be no more than \$3,300.

Act 55 created an annual appropriation that provides \$250,000 in FY 2016 and FY 2017 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. Local government units may be responsible for the cost of treatment for individuals who do not have coverage through the public or private insurance system under §51.42, Stats., on the same basis as other county residents, however this estimate assumes the department will pay for treatment.

The rule will not have an economic effect on the state's economy, specific businesses/sectors, public utilities or their tax payers, or small businesses.

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13. Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule

49.162(7), as created by 2015 Act 55, directed the department to implement the substance abuse screening, testing, and treatment requirements under 49.162.

14. Long Range Implications of Implementing the Rule

The proposed rules do not impose any financial or compliance burdens that will have a significant effect on small businesses or a significant economic impact.

15. Compare With Approaches Being Used by Federal Government

21 USC 862b provides that the federal government may not prohibit states from requiring drug tests for welfare recipients nor from sanctioning welfare recipients who fail such tests. 42 USC 608 (b) permits states to require substance abuse treatment as a component of an individual responsibility plan and to apply a penalty for noncompliance in the absence of good cause.

16. Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)

The only adjacent state planning drug testing is Michigan. In 1999, Michigan passed a law requiring all applicants for Michigan's Temporary Assistance for Needy Families program, the Family Independence Program, to undergo drug testing. That law was declared unconstitutional because the mandatory suspicionless drug testing was not intended to

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address a risk to public safety. In 2014, the Michigan legislature authorized a new three-county pilot project to evaluate drug testing of applicants for public assistance based on suspicion, and the bills were signed into law in December 2014. There are no administrative rules for this project, which is scheduled to run for one-year ending September 2016.

17. Contact Name

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18. Contact Phone Number

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ATTACHMENT A

1. Summary of Rule's Economic and Fiscal Impact on Small Businesses (Separately for each Small Business Sector, Include Implementation and Compliance Costs Expected to be Incurred)

None

2. Summary of the data sources used to measure the Rule's impact on Small Businesses

n/a. The administering agencies responsible for this rule do not meet the definition of a small business.

3. Did the agency consider the following methods to reduce the impact of the Rule on Small Businesses?

- Less Stringent Compliance or Reporting Requirements
- Less Stringent Schedules or Deadlines for Compliance or Reporting
- Consolidation or Simplification of Reporting Requirements
- Establishment of performance standards in lieu of Design or Operational Standards
- Exemption of Small Businesses from some or all requirements
- Other, describe:

n/a

4. Describe the methods incorporated into the Rule that will reduce its impact on Small Businesses

n/a

5. Describe the Rule's Enforcement Provisions

The requirements to complete a questionnaire, controlled substance testing, and controlled substance treatment are enforced only against individuals participating in work experience programs, and enforcement is based on the provisions of §49.162, Stats. No enforcement provisions are created by ch. DCF 105.

6. Did the Agency prepare a Cost Benefit Analysis (if Yes, attach to form)

- Yes No
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