



Lisa Musielewicz

Bill Analysis
Legislative Service Commission

H.B. 595
127th General Assembly
(As Introduced)

Rep. Wachtmann

BILL SUMMARY

- Requires the Director of Job and Family Services to apply for a federal waiver to establish an alcohol and controlled substance testing and treatment component of the Medicaid program.
- Requires Medicaid recipients over age 18, other than recipients who are aged, blind, or disabled, to undergo random alcohol or controlled substances tests and those determined to have an alcohol or controlled substance problem to complete a treatment program.
- Suspends for six months Medicaid eligibility of recipients who refuse to undergo random alcohol or controlled substance tests, fail to complete a treatment program, or are determined from a second or later test to have an alcohol or controlled substance problem.

CONTENT AND OPERATION

Background: Medicaid program

The Medicaid program is a joint state, federal, and county program that provides health care coverage to qualified low income or aged, blind, or disabled individuals. To receive federal assistance for Medicaid expenditures, the state's Medicaid program must comply with the federal laws that govern the program.¹ A state may ask the United States Secretary of Health and Human Services for a waiver of a requirement of federal law. If a waiver is granted, the state can continue to receive federal assistance for the Medicaid program even though a component of that program would otherwise violate federal law.

¹ The federal reimbursement for Ohio's Medicaid expenditures in fiscal year 2009 is 62.14% of the cost of most covered services.

The bill

Alcohol and controlled substance testing

The bill requires the Director of Job and Family Services to apply to the United States Secretary of Health and Human Services for a federal waiver to establish an alcohol and controlled substance testing and treatment component of the Medicaid program.

Under the component, each Medicaid recipient who is age 18 or older and qualifies for Medicaid on a basis other than being aged, blind, or disabled must undergo random chemical tests to determine whether the recipient has an alcohol or controlled substances problem (see **COMMENT**). The bill provides that an alcohol or controlled substance problem means that as an individual is determined by a chemical test to have an alcohol or controlled substance concentration level equal to or in excess of the levels under which an individual is determined to be operating a vehicle under the influence of alcohol or controlled substances.² An individual is not to be determined to have a controlled substance problem if the individual obtained the controlled substance pursuant to a prescription and took it in accordance with a health professional's directions. Each recipient who is determined to have an alcohol or controlled substances problem is to be ordered to complete a treatment program.

The Director is to apply for the waiver not later than 180 days after the bill's effective date and implement the component on receipt of the waiver.

Six month eligibility termination

Under the component, eligibility for Medicaid is to be terminated for six months each time any of the following occurs:

- (1) The recipient fails to undergo or cooperate with an alcohol or controlled substances chemical test;
- (2) The recipient, after being determined to have an alcohol or controlled substance problem, fails to complete the treatment program the recipient is ordered to complete;
- (3) The recipient is determined by a chemical test to have an alcohol or controlled substance problem a second or subsequent time after initially being determined to have such a problem.

² R.C. 4511.19.

COMMENT

A federal waiver is needed because federal Medicaid law does not permit a state to condition Medicaid eligibility on testing for alcohol or controlled substances. Federal law requires that a state Medicaid plan provide for making medical assistance available to "all individuals" who meet specified income or other standards and that the assistance to each individual "not be less in amount, duration, or scope than the medical assistance made available to any such other individual."³

Requiring Medicaid recipients to undergo testing that is not based on well founded suspicion is likely to be found by a court to violate the Fourth Amendment of the United States Constitution, which prohibits unreasonable searches. A federal district court enjoined implementation of a suspicionless drug testing program for a Temporary Assistance for Needy Families program in Michigan, a decision affirmed by the Sixth Circuit Court of Appeals.⁴

HISTORY

| ACTION | DATE |
|------------|----------|
| Introduced | 06-16-08 |

h0595-i-127.doc/kl

³ 42 U.S.C. 1396a(a)(10)(A)(i) and 1396a(a)(10)(B).

⁴ *Marchwinski v. Howard*, 113 F. Supp.2d 1134, 2000 (E.D. Mich. 2000), rev'd 309 F.3d 330 (6th Cir. 2002), vacated by reh'g en banc 319 F.3d 258 (6th Cir. 2003), aff'd on reh'g 60 Fed. Appx. 601 (6th Cir. 2003).