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Honorable John Albers
State Senator
Coverdell Legislative Office Building, Room 324-B
Atlanta, Georgia 30334

SUBJECT: Fiscal Note
Senate Bill 292 (LC 33 4358)

Dear Senator Albers:

This bill would require applicants for both Temporary Assistance for Needy Families (TANF) and Georgia Medicaid to undergo drug testing as a condition for receiving benefits. Those testing positive for controlled substances would be ineligible to receive TANF and/or Medicaid benefits for specified time periods. The state Department of Human Services (DHS) would be required to select which particular type of drug test to adopt and to develop regulations applicable to the drug testing function for TANF applicants. The Department of Community Health (DCH) would be required to do likewise for applicants of medical assistance.

Dependent children under the age of 18 would be exempt; however, parents of dependent children who receive TANF and/or Medicaid benefits would be subject to such testing as well as protective payees, who are designated adults receiving benefits on behalf of the dependents. The cost of the drug tests would be the responsibility of the applicant. However, TANF applicants whose test results are negative would receive reimbursement in the form of an increase in their initial TANF benefit. Additionally, regarding Medicaid applicants whose test results are negative, the bill directs DCH to increase the amount of the person's initial medical assistance by the amount they paid for the drug testing.

Overall, the bill's fiscal impact is presented through the following two distinct considerations: 1) an estimated annual cost, ranging from approximately \$20.4 million to \$48 million each year, to administer the TANF and Medicaid drug testing functions and 2) an estimated reduction in TANF and Medicaid benefit expenditures totaling approximately \$16.5 million annually, based upon the extent to which applicants may test positive for drugs and, consequently, be ineligible to receive benefits. Resultantly, the net fiscal impact of implementing the bill is estimated to cost from \$3.8 million to \$31.5 million annually. It should be noted that these figures are based upon the bill's provisions of testing TANF and Medicaid applicants and, consequently, do not consider testing TANF and Medicaid recipients during subsequent annual benefit renewal periods. The following two sections provide more detailed information regarding these cost estimates regarding TANF and Medicaid.

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1. Fiscal Impact of Drug Testing for TANF Applicants

To implement the TANF portion of this bill, it is estimated that there would be: 1) an estimated annual cost, ranging from approximately \$567,000 to \$834,000, to administer the drug testing function and 2) an estimated reduction in TANF benefit expenditures of approximately \$441,000 annually, based upon the extent to which applicants may test positive for drugs and, consequently, be ineligible to receive TANF benefits. Resultantly, the net fiscal impact of implementing the TANF portion of this bill is estimated to cost from \$126,000 to \$393,000 annually. As noted earlier, these figures are based upon the bill's provisions of testing TANF applicants and, consequently, do not consider testing TANF recipients during subsequent annual benefit renewal periods. The analysis also does not consider that individuals who fail the drug test can reapply for benefits multiple times within the year.

The overall annual cost of administering the drug testing function is estimated to total from \$567,000 to \$834,000, primarily depending upon the specific type of drug testing adopted by the DHS. For example, the cost of each drug test through a urine sample method is estimated to cost about \$28.50 while utilizing a saliva swab method is estimated to cost about \$14.00. The drug testing portion of these annual costs is estimated to total from about \$257,000 (via the saliva swab method) to about \$524,000 (via the urine sample method). This is based upon DHS information, showing that there are approximately 19,200 new applicants for TANF each year (1,600 each month) who meet current TANF eligibility requirements and reducing this total by the number who may test positive for substance abuse and would, thereby, be responsible for the cost of their respective drug test. It should be noted that there are another 64,800 TANF applicants annually (5,400 per month) who do not meet existing TANF eligibility requirements, such as mandatory work activity and income-level restrictions. As these applicants are already being deemed ineligible for TANF, they are not included within the equation of this bill's impact.

The remaining \$310,000 in administrative cost is for additional DHS personnel. The DHS expects that two additional positions would be needed to coordinate the overall drug testing function and five additional personnel would be needed to process drug testing reimbursements to applicants who test negative.

Annually, the offsetting reduction in TANF benefit expenditures, based upon the drug testing function preventing applicants with positive drug test results from receiving TANF benefits, is estimated to total about \$441,000. This figure is based upon 25% (4,800) of the total 19,200 new TANF applicants each year, as this percentage represents TANF households headed by a parental adult. In such households, the average portion of TANF benefits that would be cut when the parental adult tests positive was estimated by DHS at \$45 per month. In the remaining 75% (14,400) of TANF applicant cases, DHS indicated that non-parental adult protective payees are heading the households and no TANF benefits are paid to them; consequently, no such TANF benefits would be cut if these non-parental adults tested positive for substance abuse. To arrive at the estimated \$441,000 reduction of benefits that may occur, only 17% (816) of the above 4,800 parental adult figure is used, as this percentage represents the proportion of adults in Georgia (in the 18-25 age category) who used illicit drugs, according to a 2007 model-based study by the federal Department of Health and Human Services.

This \$441,000 is likely a liberal presentation of the possible estimated reduction of TANF benefit payments applicable through the bill, as it reflects ineligibility for a full year - while the bill stipulates that applicants who test positive are ineligible for time periods of less than 12 months and may reapply per the following timetable:

- for a first positive drug test result, one month of ineligibility;
- for a second positive drug test result, three months of ineligibility; and
- for a third positive drug test result, one year of ineligibility, but allowed to reapply after six months if a substance abuse treatment program is completed.

Compared to the estimated net fiscal cost to implement this bill in Georgia, a report by the Foundation of Government Accountability regarding a similar drug testing function recently implemented in Florida's TANF Program shows

estimated savings of \$923,000 the first month and over \$9 million in savings projected annually. However, in reviewing the report and contacting the Florida program, we found that:

- These reported savings are based upon 574 TANF applicants labeled in the report as “drug-related denials” although the report clearly states that only nine of these 574 applicants were denied for a “drug-related reason” or a “positive test.”
- The report further states that the remaining 565 applicants were “missing drug test results” and “almost all remaining applicants never completed a drug test.”
- These reported \$923,000 monthly savings include no offset for the cost of administering Florida’s function, although the number of TANF applicants in Florida is, reportedly, more than five times greater than in Georgia (37,400 applicants per month in Florida versus Georgia’s estimated 7,000).
- The Florida savings calculations use a monthly TANF benefit amount to each applicable adult that is three times Georgia’s monthly amount (\$134 versus Georgia’s \$45).

3. Fiscal Impact of Drug Testing for Medicaid Applicants

To implement the Medicaid portion of this bill, it is estimated that there would be: 1) an estimated annual cost of approximately \$19.8 million to administer the drug testing function; 2) approximately \$27.3 million in state funds to cover Medicaid benefits during the time period applicants would be presumed eligible pending drug test results; and 3) an estimated reduction in Medicaid benefit expenditures of approximately \$16.1 million annually, based upon the extent to which applicants may test positive for drugs and, consequently, be ineligible to receive Medicaid benefits. Resultantly, (depending upon whether state funds would be required to cover periods of applicants’ presumed eligibility), the net fiscal impact of implementing the Medicaid portion of this bill is estimated to cost from \$3.7 million to \$31 million annually. As noted earlier, these figures are based upon the bill’s provisions of testing Medicaid applicants and, consequently, do not consider testing such recipients during subsequent annual benefit renewal periods. The analysis also does not consider that individuals who fail the drug test can reapply for benefits multiple times within the year, as with TANF.

The annual cost of administering the drug testing function is estimated to total about \$19.8 million. The drug testing portion of these annual costs is estimated to total approximately \$16.5 million via the urine sample method, which would cost about \$28.50 per test. This is based upon DCH information, showing that there are approximately 700,000 new applicants for Medicaid annually, including Low Income Medicaid as well as Aged, Blind, and Disabled Medicaid applicants. Of these applicants, 119,000 (17%) may test positive for substance abuse and would, thereby, be responsible for the cost of their respective drug test. The state would be required to reimburse the cost of the drug tests through Medicaid for the remaining 581,000 applicants whose test results are negative. Although this cost is based on using urine samples, the DCH noted that blood tests have been determined to be more reliable but would be more expensive, at a cost of about \$34 each.

The remaining \$3.3 million represents annual administrative costs of the drug testing function including: approximately \$99,000 per year for a program specialist to operate the program; \$128,000 per year for an attorney to handle administrative hearings, appeals, and program oversight; and \$50,000 for IT system revisions and maintenance. Additionally, approximately \$3 million per year is estimated for the vendor currently handling Medicaid eligibility to administer the bill’s procedural requirements, including handling lab education and compliance oversight and providing notice of adverse test results to applicable parties.

Information provided by the DCH indicates that the state could be liable for approximately \$27.3 million in Medicaid benefits coverage during the period that Medicaid applicants meet existing eligibility requirements and are awaiting the results of the bill’s added drug testing results criterion.

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State funding liability for this added eligibility criterion is likely, according to the DCH, as the federal Centers for Medicare and Medicaid Services (CMS) may not approve drug testing as an authorized Medicaid eligibility criterion (see later paragraphs regarding DCH legal staff explanations). In order to implement the drug testing requirement, the DCH indicated that they would need to submit a Medicaid State Plan amendment to the federal CMS. If such an added drug testing criterion is not approved beyond existing, approved eligibility criteria, applicants would be presumed eligible for Medicaid benefits upon meeting existing criteria. Consequently, state funds would be necessary to cover any time period during which applicants would be presumed eligible and awaiting drug test results. It was estimated that such time period would be about one month. The \$27.3 million estimate was based upon this time period applying to about 17% of Medicaid applicants (which is the percentage that research indicates may test positive) or about 119,000 individuals at a current Medicaid per capita monthly payment rate to care management organizations of \$230.

Regarding individuals whose test results are negative, the bill requires DCH to “increase the amount of the initial medical assistance by the amount paid by the individual for the drug testing.” However, in Georgia’s Medicaid Program, Medicaid payments are not made to individuals. Instead, the state pays contracted care management organizations based upon a per capita Medicaid beneficiary amount. Consequently, to implement the bill’s requirement, the DCH would be required to obtain authorization from CMS to issue medical assistance payment amounts to individual applicants who have negative test results. While DCH indicated that it may be possible to handle such payments through its Medicaid Management Information

System (MMIS), this would require significant revision to the MMIS at a cost that would likely exceed several hundred thousand dollars.

Annually, the offsetting reduction in Medicaid benefit expenditures, based upon the drug testing function preventing applicants with positive drug test results from receiving Medicaid benefits, is estimated to total about \$16.1 million. DCH estimates that 59% (413,000) of the 700,000 annual Medicaid applicants will be approved for benefits and that 17% of these approved individuals (totaling about 70,210) will test positive for drugs. This percentage represents the proportion of adults in Georgia (in the 18-25 age category) who used illicit drugs, according to a 2007 model-based study by the federal Department of Health and Human Services. To arrive at the estimated \$16.1 million reduction of benefits that may occur, the per capita rate of \$230 per month paid to care management organizations was applied to the 17% of individuals who may test positive for drugs.

Other points regarding implementation of this bill were noted by the DCH’s legal staff, which may further impact fiscal considerations. As presented by the DCH, these points include:

1. Currently, federal regulations do not support drug testing for Medicaid applicants, as the federal Social Security Act (Title XIX) does not authorize criteria other than income, resources, and medical condition as eligibility criteria for Medicaid benefits. While the state is given latitude to establish Medicaid eligibility criteria, such criteria must meet the objectives of the Social Security Act and address the potential recipients' income and resource availability.
2. Given this lack of federal authority to use drug testing as a condition for Medicaid eligibility, it is unlikely that the federal CMS would approve a submitted Medicaid State Plan Amendment to permit this change in Medicaid eligibility criteria.
3. The State may anticipate litigation to result from the bill’s drug testing requirement as a drug test may be considered a “search” under the U.S. Constitution. While there is a class of constitutionally permissible suspicionless searches, the Supreme Court has ruled that the submission to a drug test amounts to an unconstitutional suspicionless search that does not meet the “special needs” test. Successful application of the “special needs” test is predicated upon balancing an individual’s private interests against public needs.

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4. If an applicant fails the drug test, the bill outlines a staggered application and approval protocol based upon the number of times that the applicant fails the test. However, appeal rights attach at the time of application. Therefore, each time an applicant fails the drug test, he or she may appeal the denial of benefits. An applicant alleging constitutional violations associated with this denial may request, or a judge may require, that those constitutional issues be addressed at Superior Court, requiring representation from an attorney at the Attorney General's Office.
5. State caseworkers represent the state's interests in eligibility determination cases. There could be an increase in the number of hearings resulting from applicants that either refuse to take the test or who fail the test. The state can incur additional litigation costs associated with securing witnesses to testify to the validity of the test and chain of custody. This does not include administrative costs for the Office of State Administrative Hearings to process appeals and send judges to hear such cases.

Respectfully,

/s/ Russell W. Hinton
State Auditor

/s/ Debbie Dlugolenski Alford, Director
Office of Planning and Budget

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