



COMMUNITY ADVOCATES
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Public Policy Institute

For Immediate Release

Media Contact: Mike Bare (920.242.1639; mbare@communityadvocates.net)

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Advocates Challenge Governor's Proposal to Require Drug Tests to Receive Public Assistance and Unemployment Insurance

Milwaukee—Today, 15 organizations have joined to express concern over Governor Walker's proposal to require applicants for and recipients of public assistance and unemployment insurance to pass drug tests. The attached letter was sent to Governor Walker and members of the Legislature in advance of the Governor's budget address, signed by non-partisan advocates for low-income Wisconsinites, members of Wisconsin's faith community, advocates for Wisconsin women, representatives of organized labor, and national organizations. The letter poses numerous questions about the Governor's proposal to require public assistance and unemployment insurance applicants and recipients to pass drug tests.

Following is a statement by David R. Riemer, Senior Fellow at the Community Advocates Public Policy Institute (Bio: http://communityadvocates.net/ppi/who_we_are/#David): "Governor Walker's proposal raises a series of important questions for policymakers to address before going full steam into removing Wisconsinites from public assistance and unemployment insurance for not passing drug tests. These questions concern the constitutionality of the plan, its costs, the many new processes that will have to be implemented, and evidence about whether the plan would improve public health and is cost effective."

Riemer continued: "Even if all of these questions are answered, drug testing is hardly a wise policy solution for greatly increasing employment and reducing poverty in Wisconsin." The letter suggests that policymakers look to evidence-based solutions that could dramatically reduce poverty and help Wisconsinites get back to work: expanding the state's transitional jobs program, restoring and expanding the state earned income tax credit (EITC) and Homestead Credit, raising the state's minimum wage, and expanding BadgerCare to cover all adults with incomes up to 133% of the federal poverty level.

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Dear Governor Walker:

We are deeply concerned about your proposal to deny public assistance and unemployment insurance benefits to certain Wisconsin residents who test positive for use of illegal drugs. We share your desire to encourage *all* Wisconsinites to discontinue and avoid illegal drugs. That is not the issue. Nor do we believe that drug testing itself has no role. It is appropriate for certain types of employment. Government policies must be supported by evidence, however, and in this case the evidence is lacking.

The state can and should do more to help those with low incomes, those struggling to find work, and those in need of substance use treatment. But this costly policy will increase the size and reach of government while giving no aid to public health, saving no tax dollars, and imposing an unconstitutional burden, which may lead to expensive legal battles.

We have a number of questions about your proposal that we hope you will consider and answer:

Is your proposal constitutional? Any requirement that Americans take a drug test is considered a “search.” The Fourth Amendment to the U.S. Constitution protects Americans against “unreasonable searches.” In general, searches without suspicion like this one are considered unconstitutional.

Federal law also prohibits drug testing as a condition of receiving FoodShare (7 C.F.R. § 273.2(a)(1)). Drug testing for unemployment insurance is only allowable under two very limited circumstances: (1) if the applicant is terminated from employment with the applicant’s most recent employer because of unlawful use of a controlled substance, or (2) the only available suitable work (as defined by state law) for an individual is in an occupation that regularly conducts drug testing. Wisconsin is already one of five states that requires individuals convicted of a drug offense to submit to drug tests for W-2.

What will it cost and who pays? Wisconsin taxpayers would have to pay for the state’s legal defense of this proposal. In addition, each drug test has a high cost, as would the potential side effects of individuals and families’ loss of public assistance and unemployment insurance benefits. In most states that have tried or proposed this policy, there were no tax savings. The cost of drug tests and program administration is high with only small benefits. Virginia’s program, for example, would have cost an estimated \$1.5 million and saved only \$229,000. Drug treatment is also an expensive benefit, but worth providing. However, government testing for drugs is not effective way to identify those in need of substance use treatment. We would prefer to see those resources directed to established treatment programs.

What are the mechanics of the testing program? The number of “mechanics” questions currently left unanswered is troubling, as many of these factors impact cost to taxpayers and the burden on low-income individuals. How frequently would current recipients be tested? Who would administer the tests? Would a positive result be shared with the child welfare system and other child protection agencies? What notice would the applicant/recipient receive if benefits are denied? How soon after benefits are denied would a former recipient/applicant be able to reapply for benefits? What opportunity would the recipient/applicant have to appeal a result? During an appeal, would benefits be discontinued or remain in place? Would low-income recipients/applicants be provided counsel if they challenge the finding that they tested positive? What treatment is available for those with a positive test? Who pays for the treatment? These and other questions must be answered before your proposal can be evaluated.

Will testing apply to pregnant women? Loss of health, food or other benefits would be devastating to a pregnant woman and could result in more unhealthy pregnancies with complications.

Will testing apply to veterans and their survivors? Veterans and their families have made significant sacrifices for our country. Unfortunately, some veterans suffer from higher rates of substance use disorder than non-veterans.

What is the evidence? There is little to no evidence that requiring drug tests for public assistance and unemployment insurance will reduce substance abuse, help individuals get jobs, or save taxpayer dollars. We would appreciate you sharing objective empirical evidence that supports your proposal.

Will it improve public health? When Florida tried drug testing public assistance recipients, a mere 2.6% tested positive, which is lower than the rate of illicit drug use among Wisconsin adults of 8.5%. While public health may marginally improve if drug testing results in some people receiving

substance use disorder treatment, all who lose benefits will be less able to put food on the table, pay the bills, and meet other basic needs, thus worsening public health. Please provide evidence that your proposal will do more good than harm to public health.

Why further stigmatize poor people? Paying for food with food stamps or presenting a BadgerCare card or collecting an unemployment check can already be embarrassing for individuals and families who need the benefits to survive and get back to work. Wouldn't your drug test proposal add another layer of humiliation and bolster a false public perception of those receiving public assistance?

Why interfere with employers' hiring decisions? Your proposal would require individuals participating in transitional jobs programs and other jobs programs to be tested for illegal drug use. This contradicts the principle that the government should not interfere with businesses by imposing burdensome regulations. Many employers already require a drug test as a condition of employment. The transitional jobs program already requires it if it is a requirement of the employer.

Why not invest in policies that reduce poverty and substance use disorders? Strong evidence exists that other policies can help Wisconsinites get back to work and substantially reduce poverty: transitional jobs, restoring and expanding the state Earned Income Tax Credit (EITC) and the Homestead Credit, raising the minimum wage, and expanding BadgerCare.

We thank you for your state budget proposal to **continue funding the Transform Milwaukee Jobs Program** and **expand transitional jobs** in other parts of Wisconsin based on the bipartisan legislation co-sponsored by Representative Weatherston and Senator Darling. It is our hope that, in addition to the \$13 million in combined funding that you propose for the biennium, additional funding of \$17 million will be added as the budget process proceeds. This expansion will further increase the effectiveness of Wisconsin's highly successful transitional jobs program—one of the state's most fruitful efforts to provide low-income adults the work experience and technical skills they need to move into unsubsidized private-sector employment. We look forward to working with you to support these initiatives through the legislative process.

Regrettably, your drug testing proposal is unconstitutional, will be costly for Wisconsin taxpayers, faces many administrative obstacles, will put pregnant women and veterans at risk, will not clearly improve public health, further stigmatizes poor people, lacks evidence to support it, and interferes with employer decisions.

Thank you for your consideration. We would be happy to meet with you or members of your staff to discuss these questions and concerns, as well as evidence-based policies that have been shown to get Wisconsinites back to work and reduce poverty.

Sincerely,

Community Advocates Public Policy Institute
Wisconsin Council of Churches
League of Women Voters of Wisconsin
Wisconsin Community Action Program
Association (WISCAP)
Wisconsin Lutheran Office for
Public Policy in Wisconsin
Milwaukee Transitional Jobs Collaborative
Wisconsin Alliance for Women's Health

Justice Initiatives Institute
Project RETURN
Citizen Action of Wisconsin
Wisconsin Jobs Now
AFSCME Council 40
Planned Parenthood of Wisconsin
Center for Law and Social Policy (CLASP)
National Employment Law Project (NELP)

Cc: Secretary Rhoades; Secretary Anderson; Secretary Newson; Senator Fitzgerald; Senator Schilling; Speaker Vos; Representative Barca; Members of the Joint Finance Committee: Senator Darling, Representative Nygren, Senators Olsen, Harsdorf, Vukmir, Tiffany, Marklein, Taylor and Erpenbach, and Representatives Kooyenga, Loudenbeck, Knudson, Schraa, Czaja, Taylor, and Hintz; Members of the Assembly Committee on Benefit Reform: Representatives Born, Jorgensen, Kapenga, Brandtjen, Vorpagel, Schraa, Kremer, Craig, Neylon, Krug, Tauchen, Goyke, Kolste, Spreitzer, and Subeck