



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

eFILED

7/28/2017 3:06:30 PM

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE AND FILING WITH THE LEGISLATIVE RULE-
MAKING REVIEW COMMITTEE**

AGENCY: Human Services TITLE-SERIES: 78-26
RULE TYPE: Legislative Amendment to Existing Rule: No Repeal of existing rule: No
RULE NAME: 78-26 Pilot Program for Drug Screening of Applicants for Cash Assistance

PRIMARY CONTACT

NAME: Linda Watts
ADDRESS: 350 Capitol Street Room 730
Charleston, WV 25301
EMAIL: linda.m.watts@wv.gov
PHONE NUMBER: 304-356-4527

CITE STATUTORY AUTHORITY: 9-3-6N

EXPLANATION OF THE STATUTORY AUTHORITY FOR THE LEGISLATIVE RULE, INCLUDING A DETAILED SUMMARY OF THE EFFECT OF EACH PROVISION OF THE LEGISLATIVE RULE WITH CITATION TO THE SPECIFIC STATUTORY PROVISION WHICH EMPOWERS THE AGENCY TO ENACT SUCH RULE PROVISION:

STATUTORY AUTHORITY

The Secretary of the Department of Health and Human Resources shall propose rules for legislative approval in accordance with W. Va. Code §29A-3-1 et seq. to implement the all of the provisions of W. Va. Code § 9-3-6N. The Department of Health and Human Resources is empowered to enact each provision of W. Va. Code of State Rules 78-26-1 by the authority specifically found in W. Va. Code § 9-3-6N

DATE eFiled FOR NOTICE OF HEARING OR PUBLIC COMMENT PERIOD: 6/27/2017

DATE OF PUBLIC HEARING(S) OR PUBLIC COMMENT PERIOD ENDED: 7/27/2017

COMMENTS RECEIVED: Yes

(IF YES, PLEASE UPLOAD IN THE COMMENTS RECEIVED FIELD COMMENTS RECEIVED AND RESPONSES TO COMMENTS)

PUBLIC HEARING: No

(IF YES, PLEASE UPLOAD IN THE PUBLIC HEARING FIELD PERSONS WHO APPEARED AT THE HEARING(S) AND TRANSCRIPTS)

RELEVANT FEDERAL STATUTES OR REGULATIONS: No

WHAT OTHER NOTICE, INCLUDING ADVERTISING, DID YOU GIVE OF THE HEARING?

SUMMARY OF THE CONTENT OF THE LEGISLATIVE RULE, AND A DETAILED DESCRIPTION OF THE RULE'S PURPOSE AND ALL PROPOSED CHANGES TO THE RULE:

STATUTORY AUTHORITY

The Secretary of the Department of Health and Human Resources shall propose rules for legislative approval in accordance with W. Va. Code §29A-3-1 et seq. to implement the all of the provisions of W. Va. Code § 9-3-6N. The Department of Health and Human Resources is empowered to enact each provision of W. Va. Code of State Rules 78-26-1 by the authority specifically found in W. Va. Code § 9-3-6N

STATEMENT OF CIRCUMSTANCES WHICH REQUIRE THE RULE:

Statement of Circumstances: The Drug Screening Pilot Program was approved to move forward from Administration for Children and Families (ACF) our Federal Partners. All applicants who would be eligible for TANF and are in the Cash Assistance Group would complete a drug screening questionnaire. If they refuse to complete the questionnaire they will be ineligible for TANF. Based on three or more positive responses by the applicant indicating drug usage on the questionnaire. Reasonable suspicion the applicant will be required to register for drug testing within 7 days. Any applicant who has a positive drug test shall complete a substance abuse treatment and counseling program and a job skills program approved by the Secretary. An applicant may continue to receive benefits from the TANF Program while participating. Second positive drug test will be suspended from the TANF Program for 12 months. Third positive drug test will result in the applicant be terminated from the TANF Program.

SUMMARIZE IN A CLEAR AND CONCISE MANNER THE OVERALL ECONOMIC IMPACT OF THE PROPOSED LEGISLATIVE RULE:

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

The purpose of this bill is to require drug screening and testing of applicatns for the Temporary Assistance to Needy Families Program for whom there is a reasonable suspicion of substance abuse. The bill creates a pilot program requiring applicants to pass an initial drug test to become eligible for benefits, requiring participation in a substance abuse treatment program, counseling and job skills program with an adverse drug test; precluding assistance for refusal to take a drug test; establishment of administrative review of decisions to deny benefits; providing mechanism for dependent children to receive benefits if a parent is deemed ineligible; setting forth prohibition from benefits for an adverse drug test. The bill requires federal approval of the program and ensures confidentiality of records.

B. ECONOMIC IMPACT OF THE LEGISLATIVE RULE ON THE STATE OR ITS RESIDENTS:

The purpose of this bill is to require drug screening and testing of applicatns for the Temporary Assistance to Needy Families Program for whom there is a reasonable suspicion of substance abuse. The bill creates a pilot program requiring applicants to pass an initial drug test to become eligible for benefits, requiring participation in a substance abuse treatment program, counseling and job skills program with an adverse drug test; precluding assistance for refusal to take a drug test; establishment of administrative review of decisions to deny benefits; providing mechanism for dependent children to receive benefits if a parent is deemed ineligible; setting forth prohibition from benefits for an adverse drug test. The bill requires federal approval of the program and ensures confidentiality of records.

C. FISCAL NOTE DETAIL:

Effect of Proposal	Fiscal Year		
	2017 Increase/Decrease (use "-")	2018 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost		50,172.00	22,172.00
Personal Services			
Current Expenses		50,172.00	22,172.00
Repairs and Alterations			
Assets			
Other			
2. Estimated Total Revenues			

D. EXPLANATION OF ABOVE ESTIMATES (INCLUDING LONG-RANGE EFFECT):

Na

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENTS ARE TRUE AND CORRECT.

TITLE 78
LEGISLATIVE RULE
DEPARTMENT OF HEALTH AND HUMAN RESOURCES

SERIES 26
PILOT PROGRAM FOR DRUG SCREENING OF APPLICANTS
FOR CASH ASSISTANCE

§78-26-1. General.

1.1. Scope -- Subject to federal approval, this rule establishes and sets forth the requirements for drug screening applicants of benefits from the Temporary Assistance for Needy Families Program under a three year pilot program. For the purposes of the pilot program contained in this rule, pursuant to the authority and option granted by 21 U. S. C. §862a(d)(1)(A) to the states, West Virginia hereby exempts all persons domiciled within the state from the application of 21 U. S. C. §862a(a).

1.2. Authority. -- W. Va. Code § 9-3-6(n).

1.3. Filing date. -- _____.

1.4. Effective date. -- _____.

1.5 Sunset Provision -- This rule shall terminate and have no further force or effect upon the expiration of five years from its effective date.

§78-26-2. Definitions.

2.1. Applicant – means a person who is applying for benefits from the Temporary Assistance for Needy Families Program.

2.2. Case manager – means a person employed by the department with responsibility for making a reasonable suspicion determination during the application process for Temporary Assistance for Needy Families.

2.3. Department – means the Department of Health and Human Resources.

2.4. Drug abuse—means the use of prescribed or over the counter medications used in excess of the recommended dosages. Drug abuse also includes any non-medical use of prescribed or over the counter medications.

2.5. Drug screen or drug screening – means any analysis regarding substance abuse conducted by the Department of Health and Human Resources on applicants for assistance from the Temporary Assistance for Needy Families program.

2.6. Drug test or drug testing – means a drug test which tests urine for Amphetamines

(amphetamine and methamphetamine) Cocaine, Marijuana, Opiates (codeine and morphine), Phencyclidine, Barbiturates, Benzodiazepines, Methadone, Propoxyphene and Expanded Opiates (oxycodone, hydromorphone, hydrocodone, oxymorphone).

2.7. Drug use questionnaire—An assessment tool to be used by case managers to ascertain if there is reasonable suspicion that an applicant is abusing drugs. The questionnaire uses a point based system to assist the case manager in determining if there is reasonable suspicion.

2.8. Protective payee—means an individual to receive public assistance payments on behalf of another person.

2.9. Reasonable suspicion—means a point total on the drug use questionnaire that indicates the possibility of drug abuse. Reasonable suspicion is also achieved if an applicant has been convicted of a drug related offense within three years of completion of the drug use questionnaire.

2.10. Secretary – means the secretary of the department or his or her designee.

2.11. Treatment program -- means any substance abuse treatment and counseling program which is licensed by the State of West Virginia and regulated pursuant to Title 64, Series 11, Title 69, Series 11 or Title 69, Series 12 of the West Virginia Code of State Rules.

2.12. Temporary Assistance for Needy Families Program (TANF)— means assistance provided through ongoing cash benefits pursuant to 42 U.S.C. §601, et seq., operated in West Virginia as the West Virginia Works Program pursuant to article nine of chapter nine of the W. Va. Code.

§78-26-3. Drug Screening Process

3.1. Upon application for TANF benefits all applicants will be provided a drug screening questionnaire to complete.

3.2. Should an applicant refuse to complete the drug screening questionnaire, the applicant is ineligible for TANF benefits.

3.3. If the drug use questionnaire indicates reasonable suspicion the applicant will be referred for a drug test.

3.3.a. The applicant and case manager will coordinate together to arrange for the applicant to be drug tested by a third-party vendor.

3.3.b. The drug test must be completed by the applicant within seven (7) days of the completion of the drug use questionnaire.

3.3.c. Should unforeseen circumstances prevent the applicant from completing a drug test within seven (7) days, the applicant and the case manager will confer and the case manager will, if he or she deems it appropriate, allow the applicant additional time to complete the test. The case manager shall have sole discretion to allow the applicant more than seven (7) days to complete the test.

3.4 Upon receipt of the drug test results the case manager will:

3.4.a. Contact the applicant to advise them of the results.

3.4.b. If the results are negative the application will be accepted and the applicant will be assigned an activity under the TANF program.

3.4.c. If the results of the drug test are positive the application will be accepted and the applicant will be assigned to a treatment program and a job skills program as their activities under the TANF program.

3.5 Notwithstanding Section 3.4.c above, any applicant who submits a positive drug test can avoid assignment to a treatment program, if, immediately upon assignment to such a program the case manager is informed by the applicant that they are in possession of a valid prescription for the drug(s) that created the positive test result. Within twenty-four (24) hours of informing the case manager of possession of a valid prescription(s) the applicant shall produce it/them.

§78-26-4. Substance Abuse Treatment and Counselling Program Requirements.

4.1. Upon assignment to treatment by a case manager, the applicant will have seven (7) days to enroll in a treatment program. Should unforeseen circumstances prevent the applicant from enrolling in a treatment program within seven (7) days, the applicant and the case manager will confer and the case manager will, if he or she deems it appropriate, allow the applicant additional time to enroll. The case manager shall have sole discretion to allow the applicant more than seven (7) days to enroll. At the same time, the case manager will assign the applicant to a job skills program of the Secretary's choosing.

4.2. Once an applicant is enrolled in a program they shall provide the case manager with weekly time sheets which have been provided to the applicant by the case manager. The applicant will also provide the case manager with weekly progress reports from the treatment program.

4.3. During participation in the treatment program, the applicant is subject to random drug testing. In similar fashion to the original drug test, the case manager will, with the applicant, coordinate to arrange for the applicant to be drug tested by a third-party vendor.

4.4. Upon successful completion of the substance abuse program the applicant will be assigned to a new activity such as job searching, community college enrollment or other similar activities to prepare the applicant for job placement.

4.5. Upon successful completion of the substance abuse program the applicant shall continue to be subject to random drug testing. Again, such drug testing will be arranged by the applicant and the case manager and will be conducted by a third-party vendor.

4.6 Should an applicant refuse to enroll in a treatment program or participate in a job skills program they are, subject to applicable federal law, ineligible for TANF benefits.

4.7 Any applicant who does not successfully complete both a treatment program and a job skills program is ineligible for TANF benefits, until successful completion.

4.8 If an applicant fails a drug test after completion of the programs mentioned above, their receipt

of TANF benefits shall be suspended until they successfully complete a second treatment program and job skills program, or for twelve (12) months, whichever period shall be shorter.

4.9 An applicant's third positive drug test shall, subject to applicable federal law, render them ineligible for TANF benefits.

§78-26-5. Other Adult Members, Dependent Children and Protective Payee.

5.1. A protective payee may be designated for any applicant who is ineligible for TANF benefits due to:

5.1.a. The applicant's refusal to fill out a drug questionnaire or participate in a drug test;

5.1.b. The applicant's refusal to participate in a treatment program

5.1.c. The applicant's second or third positive drug test

5.2. Upon an ineligibility determination as discussed in Section 5.1 above, the applicant may designate a protective payee. The protective payee will receive TANF monies on behalf of the other eligible dependents in the applicant's household. The protective payee shall have a fiduciary duty to properly expend all TANF monies received on behalf of the other eligible dependents.

5.3. The protective payee may be an immediate family member of the applicant or another person.

5.4. The applicant shall present the proposed protective payee to their case manager for approval.

5.5. The secretary shall require the applicant's designated protective payee to submit to the department's drug screening questionnaire and, if the designated protective payee satisfactorily completes the questionnaire, he or she shall be approved as a protective payee for the child.

5.6. The Secretary reserves the right to audit all usage of TANF monies by the protective payee.

§78-26-6. Coordination with Child Protective Services.

6.1. An investigation and home visit shall be conducted regarding the children of any applicant who has their benefits terminated or whose benefits are suspended without the designation of a protective payee.

6.2. The investigation and home visit shall be conducted by Child Protective Service workers. Once they are completed the worker shall prepare a report which details any action deemed necessary for the health and welfare of the children involved. If the health and welfare of the children involved does not require any action on the part of Child Protective Services, the report shall state as such.

6.3. If the report indicates that Child Protective Services action is necessary, all services provided to the applicant and children shall be provided or coordinated by CPS workers, and not the case manager.

§78-26-7. Appeal rights.

7.1. Any applicant or protective payee who believes that they have been aggrieved by any action undertaken pursuant to West Virginia Code Section 9-3-6, or this Legislative Rule, shall have the right to file an appeal with the West Virginia Board of Review.

§78-26-8. Confidentiality.

8.1. The Secretary shall ensure the confidentiality of all drug screen and drug test results administered as part of this program.

8.2. Drug screen and test results shall be used only for the purpose of determining eligibility for the TANF program.

8.3. At no time may drug screen or test results be released to any public or private person or entity or any law-enforcement agency, except as otherwise authorized by this rule.