



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

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Office of West Virginia
Secretary Of State

**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: Yes Repeal of existing rule: No
RULE NAME: 78-26 Pilot Program for Drug Screening of Applicants for Cash Assistance

PRIMARY CONTACT

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CITE STATUTORY AUTHORITY: W. Va. Code §9-3-6(n)

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:

The statutory authority for this legislative rule can be found at W. Va. Code §9-3-6(n). W. Va. Code §9-3-6 establishes the drug screening program for applicants for cash assistance through the Temporary Assistance for Needy Families Program (TANF). Subsection (n) provides rule making authority specific to the implementation of design, operation, and standards found under W. Va. Code §9-3-6.

W. Va. Code R. §78-26-1, establishes the Pilot Program for Drug Screen of Applicants for Cash Assistance as contemplated and set forth in W. Va. Code §9-3-6. It should be noted, this is the only section of the rule being modified. The sunset date found under W. Va. Code R. §78-26-1.5. has been amended to reflect the statutorily imposed end date of December 31, 2026, for the program found at W. Va. Code §9-3-6(b).

W. Va. Code R. §78-26-2 provides definitions terms used within the rule.

W. Va. Code R. §78-26-3 sets forth the drug screening process that applicants for TANF benefits will be subject to (which includes a drug screen questionnaire as well as the screening process itself. It also provides for criminal prosecution for applicants that attempt to defraud the program.

W. Va. Code R. §78-26-4 sets forth the Substance Abuse Treatment and Counselling Program requirements that TANF applicants must meet in order to receive benefits.

W. Va. Code R. §78-26-5 governs the designation of protective payees of TANF benefits. Under this rule, a Protective Payee may receive benefits on behalf of an applicant found to be ineligible and has a fiduciary duty to properly expend all TANF monies received on behalf of the applicants other eligible dependents.

W. Va. Code R. §78-26-6 requires Coordination with Child Protective Services (CPS) including an in-home visit

and investigation to be conducted by CPS regarding the children of any applicant whose benefits are suspended without the designation of a Protective Payee, or any beneficiary whose benefits are terminated. CPS is to generate a report as a result of any such investigation which details any action necessary for the health and welfare of any children involved.

W. Va. Code R. §78-26-7 grants an applicant or protective payee the right to appeal any action taken pursuant to W. Va. Code R. §78-26-1, et seq., or W. Va. Code §9-3-6, which the applicant is aggrieved by, with the Office of Inspector General, Board of Review.

W. Va. Code R. §78-26-8 requires the Secretary of the Department of Human Services to keep confidential all drug screen and drug test results conducted as part of the TANF program and limits the ability of the Department to mandate drug screening and testing to the purpose of determining TANF eligibility.

IS THIS FILING SOLELY FOR THE SUNSET PROVISION REQUIREMENTS IN W. VA. CODE §29A-3-19(e)? Yes

IF YES, DO YOU CERTIFY THAT THE ONLY CHANGES TO THE RULE ARE THE FILING DATE, EFFECTIVE DATE AND AN EXTENSION OF THE SUNSET DATE? Yes

DATE eFiled FOR NOTICE OF HEARING OR PUBLIC COMMENT PERIOD: 9/12/2024

DATE OF PUBLIC HEARING(S) OR PUBLIC COMMENT PERIOD ENDED: 10/12/2024

COMMENTS RECEIVED: No

(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: Yes

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

No public hearing was held.

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

The legislative rule found at W. Va. Code R. §78-26-1, et seq., establishes and sets forth the requirements for drug screening applicants of benefits from the Temporary Assistance for Needy Families program.

The proposed changes to this legislative rule are limited to an extension of the sunset date. The sunset date needs to be extended in order to provide Department of Human Services, Bureau for Family Assistance the legal authority necessary to operate the Drug Screening Program, one requirement of eligibility for TANF benefits, through the statutorily imposed end date of December 31, 2026.

STATEMENT OF CIRCUMSTANCES WHICH REQUIRE THE RULE:

This rule is required to provided continued authority to operate the Drug Screening Program for the Temporary Assistance for Needy Families Program, as contemplated under W. Va. Code §9-3-6.

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 Drug Screening Program has been in effect for several years and the promulgation of this amended rule should have no significant impact on revenues of State Government beyond any which it already does.

B. ECONOMIC IMPACT ON SPECIAL REVENUE ACCOUNTS:

The Drug Screening Program has been in effect for several years and the promulgation of this amended rule should have no significant impact on Special Revenue Accounts beyond any which it already does.

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

The Drug Screening Program contemplated by this legislative rule will, in part, determine whether West Virginia residents applying for public assistance through the Temporary Assistance for Needy Families program are able to obtain the public benefits and assistance available under that program.

D. FISCAL NOTE DETAIL:

Effect of Proposal	Fiscal Year		
	2024 Increase/Decrease (use "-")	2025 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost			
Personal Services			

Current Expenses			
Repairs and Alterations			
Assets			
Other			
2. Estimated Total Revenues			

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

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.

Yes

Daron A Light -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.

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. -- 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 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. -- ~~April 13, 2020~~

1.4. Effective date. -- ~~April 13, 2020~~

1.5. Sunset Provision. -- This rule shall terminate and have no further force or effect on ~~October 23, 2021~~ December 31, 2026.

§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 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.

2.5. 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).

2.6. Drug use questionnaire -- means 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.

2.7. Protective payee -- means an individual over age 18 designated to receive public assistance

payments for the eligible dependents of another person who is ineligible for benefits for himself or herself. The protective payee may be an immediate family member of the applicant.

2.8. Reasonable suspicion -- means a score on the drug use questionnaire that indicates the possibility of substance 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.

2.9. Secretary -- means the secretary of the department or his or her designee.

2.10. Substance abuse -- means the use of prescribed or over-the-counter medications used in excess of the recommended dosages, or the use of illegal substances. Substance abuse also includes any non-medical use of prescribed or over-the-counter medications.

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 64 CSR 11, 69 CSR 11, 69 CSR 12.

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 W. Va. Code §9-9-1 *et seq.*

§78-26-3. Drug Screening Process.

3.1. Upon application for TANF benefits all applicants will be provided a drug use questionnaire to complete. Applicants will be required to swear or affirm as to the veracity of their answers and will be subject to prosecution for fraud or suspension from the program for 12 months, or both, for providing false information in accordance with department policies. Public databases may be consulted by the department to verify an applicant's answers.

3.1.a. Any applicant who has been convicted of a drug related offense within three years of filling out the questionnaire must indicate as such.

3.1.b. Any such drug related conviction shall be considered grounds for reasonable suspicion, for the purpose of referring the applicant for a drug test.

3.2. Should an applicant refuse to complete the drug use 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 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 48 hours of the completion of the drug use questionnaire.

3.3.c. Should unforeseen circumstances prevent the applicant from completing a drug test within 48 hours, 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 discretion to allow the applicant more than 48 hours to complete the test. Second or subsequent

requests by the applicant to reschedule a drug test will be decided by the case manager's supervisor.

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

3.4.a. Contact the applicant to advise him or her 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 his or her activities under the TANF program.

3.5. Notwithstanding subdivision 3.4.c., 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 he or she is in possession of a valid prescription for the type and quantity of drug(s) that created the positive test result. Within 24 hours of informing the case manager of possession of a valid prescription(s), the applicant shall produce the prescription.

§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 days to enroll in a treatment program. Should unforeseen circumstances prevent the applicant from enrolling in a treatment program within seven 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 discretion to allow the applicant more than seven 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 he or she 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. In similar fashion to the original drug test, the case manager will coordinate with the applicant to arrange for the applicant to be drug tested by a third-party vendor upon the completion of the treatment program. Again, such drug testing will be arranged by the applicant and the case manager and will be conducted by a third-party vendor pursuant to the provisions of subdivision 3.3.c. of this rule.

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. The applicant shall continue to be subject to periodic, random drug testing.

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

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

4.8. If an applicant fails a random drug test after completion of the required programs, his or her receipt of TANF benefits shall be suspended until he or she successfully completes a second treatment program and job skills program, or for 12 months, whichever period shall be shorter.

4.9. An applicant's third positive drug test shall, subject to applicable federal law, render him or her 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 use questionnaire or participate in a drug test;

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

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

5.2. Upon an ineligibility determination as provided in subsection 5.1., the applicant may designate a protective payee. The protective payee will receive TANF 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 applicant shall present the proposed protective payee to his or her case manager for approval.

5.4. The secretary shall require the applicant's designated protective payee to submit to the department's drug use questionnaire and, if the designated protective payee satisfactorily completes the questionnaire, he or she will be approved as a protective payee for the eligible dependents.

5.5. 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 will be conducted by Child Protective Services (CPS) regarding the children of any applicant whose benefits are suspended without the designation of a protective payee or who has had his or her benefits terminated.

6.2. The investigation and home visit will be conducted by CPS. Once they are completed, CPS will 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 CPS, the report will state as such.

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

§78-26-7. Appeal Rights.

7.1. Any applicant or protective payee who believes that he or she has been aggrieved by any action

undertaken pursuant to W. Va. Code §9-3-6, or this rule, shall have the right to file an appeal with the West Virginia DHHR Board of Review.

§78-26-8. Confidentiality.

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

8.2. Drug screen and test results will 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.