

TENNESSEE DEPARTMENT OF **HUMAN SERVICES**

DRUG TESTING IMPLEMENTATION PLAN:

1ST QUARTER PROGRESS REPORT

OCTOBER 1, 2012



Helping Shape Tennessee Lives



**STATE OF TENNESSEE
DEPARTMENT OF HUMAN SERVICES**

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COMMISSIONER

October 1, 2012

Chairman Rusty Crowe
Senate Health and Welfare Committee
Suite 8, Legislative Plaza
Nashville, Tennessee

Chairman Glen Casada
House Health and Human Resources Committee
Suite 25, Legislative Plaza
Nashville, Tennessee

Dear Chairman Crowe and Chairman Casada:

This letter is serving as the Tennessee Department of Human Services' Drug Testing Implementation Plan FY 2013 First Quarter Progress Report.

Public Chapter 1079 requires the Department of Human Services to develop a plan to implement a program of suspicion-based drug testing for each applicant who is otherwise eligible for temporary assistance for needy families (TANF).

The Department has established a team to lead the development of the implementation plan. The team is made up of representatives from across the Department including: Office of General Counsel, Office of Inspector General, Family Assistance State Office, Family Assistance Field Management, and a Commissioner's Office representative.

The Department has also researched similar legislation that has been enacted across the nation. The Department hopes to gain insight on how other states have implemented their policy as well as any obstacles that they have faced along the way. Six (6) states have been identified as having similar drug testing policies. An overview of these state policies is listed below:

1. Arizona: Implemented testing in 2009 for cash assistance. They use a “reasonable cause” standard for determining testing. Supporters of the plan claimed that its passage could save the state around \$1.7 million per year in cash assistance.
 - Adults must fill out a 3 question statement on illegal drug use upon application for benefits, if the answers provide “reasonable cause of illegal substance abuse”, the department will notify the adult that they must complete a drug test within 10 days at the state’s expense.
 - Estimated savings were based on studies conducted based on the number of drug abusers in the general population.
 - Those who test positive would be denied cash-assistance benefits for a 12-month period.
 - Results of testing: As June 30, 2011, Arizona’s program questionnaire had identified 16 people who would be required to undergo the urinalysis. Of those identified for testing, eight refused to take the test. Of the eight remaining that took the test, only one person was declared ineligible for benefits after failing the test.

2. Florida: Passed legislation in May of 2011 authorizing the Department of Children and Family Services to perform a drug test on an applicant for TANF.
 - The cost of the drug test is the responsibility of the individual being tested unless the applicant passes urinalysis then they would be reimbursed by the state.
 - An individual who tests positive for controlled substances as a result of a drug test is ineligible to receive TANF benefits for one year after the date of the positive test unless the individual can provide a documentation of the successful completion of a substance abuse treatment program. Upon successful completion of a substance abuse treatment program, the individual may reapply for those benefits as soon as 6 months after the date of the failed test.
 - If a parent is deemed ineligible for TANF as the result of a failed drug test an appropriate protective payee shall be designated to receive benefits on behalf of the child.
 - The estimation of the drug test cost in Florida was in the \$25-\$35 range as a “bundled” test which includes the initial test and the confirmation test. Florida included the drug testing company Labcorp in conversations leading up to the legislation and Labcorp “set the market” of \$25-\$35 after smaller firms said it would be in the \$50-\$60 range.
 - The ACLU sued the State of Florida in September of 2011 on behalf of Mr. Luis Lebron.
 - A federal judge issued a temporary injunction against the State of Florida in October of 2011 to halt the testing of TANF beneficiaries. *The issue is still pending a final court ruling.*
 - Testing Results: Research points to roughly 4000 adults passed urinalysis, 108 failed, and 2300-2500 refused to take the test (although no reasoning was provided by the Dept. of Children and Families for refusal). Testing occurred over a four month period.

- The state paid back nearly \$600,000 to welfare recipients who were denied benefits during a four-month period last year because they failed or refused to take a drug test after a federal judge temporarily halted the law.
3. Georgia: Passed legislation authorizing testing in April of 2012. The bill charges DHS to create a drug test to be administered to each applicant for TANF. It provides a very minimal framework and grants the department flexibility in creating testing and rulemaking.
- The cost of the testing shall be the responsibility of the individual tested.
 - For a first positive test, the recipient shall be ineligible for TANF benefits for one month and until he or she tests negative in a retest.
 - For a second positive test, the recipient shall be ineligible for TANF benefits for three months and until he or she tests negative in a retest.
 - For a third and each subsequent positive result, the recipient shall be ineligible for TANF benefits for a period of one year and until he or she tests negative in a retest unless the individual can document the successful completion of a substance abuse treatment program offered by a provider approved by the department.
 - The department is mandated to provide any individual who tests positive with a list of substance abuse treatment providers approved by the department which are available in the area in which he or she resides. Neither the department nor the state will be responsible for providing or paying for substance abuse treatment.
 - Exemptions for testing are available for individuals who are deemed by the department to be significantly hindered due to a physical or mental handicap or developmental disability.
 - *Georgia has decided to halt moving forward on any testing pending the outcome of the lawsuit in Florida.*
4. Missouri: Passed legislation authorizing drug testing in July 2011. They use a “reasonable suspicion” threshold to determine if a benefit recipient needed to be sent to undergo drug testing.
- If an applicant or recipient refuses or fails a drug test, assistance would be cut off for 3 years, unless the recipient enters a substance abuse treatment program and does not tests positive for a 6 month period.
 - Applicant would continue to receive benefits while participating in the treatment program.
 - Legislation charged the department of social services to develop a program to screen applicants and then test using a dipstick 5 panel test. No particular screening device was laid out in the Missouri legislation.
 - It appears that the state of Missouri would pay for the cost of testing

- Latest information available indicated Missouri was writing rules for testing but no statistical data regarding testing has been made public.
5. Oklahoma: Passed legislation authorizing testing in May of 2012. The law is slated to go into effect November 1st, 2012.
- Legislation charges DHS to administer a screening device such as the Substance Abuse Subtle Screening Inventory (SASSI) or “other similar screening methods” upon application for benefits. The legislation also authorizes additional screening methods, which may include: a clinical interview, consideration of the Department’s history with the applicant, and an Addictions Severity Index (ASI). If screening indicates the applicant may be engaged in illegal drug use, the applicant will be sent to obtain a urinalysis at the cost of the applicant.
 - If the applicant fails urinalysis, assistance would be denied for 1 year. The applicant may be approved for cash benefits after 6 months have passed since the date of denial with successful completion of recommended substance abuse treatment program.
6. Utah: Passed legislation authorizing testing in the March of 2012. The law is slated to go into effect August 1, 2012. The bill requires the Department of Workforce Services to have new applicants complete a SASSI screening assessment online at the time of application. Depending on the results of the screening, applicants may be required to complete a drug urinalysis.
- According to Utah DWS spokesman Curt Stewart, licensed clinical therapists will assess the results of the Substance Abuse Subtle Screening Inventory, or SASSI, an online tool that applicants can complete within 15 to 20 minutes.
 - A positive drug test doesn’t immediately cut off benefits. The applicant has the opportunity to seek substance abuse treatment while continuing benefits.
 - While DWS absorbs the cost of the first drug test, a client who tests positive and requests a second test must pay for it out of pocket and will be reimbursed only if the result is negative.
 - No statistical data regarding Utah’s implementation of drug testing has been made available as of yet.

The Department’s Implementation Development Team will continue to meet on a regular basis while establishing a plan for achieving the deliverables that have been set forth in Public Chapter 1079.

Should you have questions, please contact my office at 615-313-4702.

In Service to Others,

A handwritten signature in black ink, appearing to read "Raquel Hatter". The signature is fluid and cursive, with the first name "Raquel" being more prominent than the last name "Hatter".

Raquel Hatter, MSW, Ed.D.
Commissioner

RH/bm