

Amendment No. 4 to HB2725

Sargent
Signature of Sponsor

AMEND Senate Bill No. 2580

House Bill No. 2725*

by adding the following language immediately preceding the enacting clause:

WHEREAS, the state of Tennessee recognizes that the public safety is enhanced when persons are not under the influence of illegal drugs. Not only are persons who are not under the pernicious influence of illegal drugs less disruptive of the social fabric, persons and neighborhoods around them are safer as well; and

WHEREAS, tax dollars should go to persons who are trying to better themselves rather than to persons who violate our state and national laws and support a network of illicit purveyors of misery and disappointment; and

WHEREAS, the public image of TANF recipients will be enhanced by removing the stigma that is too often attached to such recipients that they use government funds to purchase illegal drugs; now, therefore,

AND FURTHER AMEND by deleting all of the language after the enacting clause and by substituting instead the following:

SECTION 1. Tennessee Code Annotated, Title 71, Chapter 3, is amended by adding Sections 2 through 7 as a new part thereto.

SECTION 2. For the purposes of this part:

(1) "Caretaker relative" means the father, mother, grandfather or grandmother of any degree, brother or sister of the whole or half-blood, stepfather, stepmother, stepbrother, stepsister, aunt or uncle of any degree, first cousin, nephew or niece, the relatives by adoption within the previously named classes of persons, and the biological relatives within the previous degrees of relationship, and the legal spouses of persons within the previously named classes of persons, even if the marriage has been terminated by death or divorce, with whom a child is living;

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(2) "Chain of custody" means the methodology of tracking specified materials or substances for the purpose of maintaining control and accountability from initial collection to final disposition for all such materials or substances, and providing for accountability at each stage in handling, testing and storing specimens and reporting test results;

(3) "Confirmation test," "confirmed test" or "confirmed drug test" means a second analytical procedure used to identify the presence of a specific drug or metabolite in a specimen, which test must be different in scientific principle from that of the initial test procedure and must be capable of providing requisite specificity, sensitivity and quantitative accuracy;

(4) "Drug" means marijuana, cocaine, methamphetamine, amphetamine, and opiates such as morphine. The commissioner of human services may add additional drugs by rule;

(5) "Drug treatment program" means a service provider that provides confidential, timely and expert identification, assessment and resolution of drug or alcohol abuse problems affecting persons;

(6) "Drug test" or "test" means any chemical, biological or physical instrumental analysis administered by a drug testing agency authorized to do so pursuant to this part, for the purpose of determining the presence or absence of a drug or its metabolites pursuant to regulations adopted by rule by the commissioner of human services;

(7) "Drug testing agency" means an entity that has the required credentials as established by regulatory or certification authorities to administer tests using a person's

urine, blood or DNA that will detect and validate the presence of drugs in such person's body;

(8) "Five panel test" means a test for marijuana, cocaine, methamphetamine, amphetamine, and opiates such as morphine;

(9) "Initial drug test" means a procedure that qualifies as a "screening test" or "initial test" pursuant to regulations governing drug testing approved by rule by the commissioner of human services;

(10) "Legal guardian" means a person or entity that has the legal authority to provide for the care, supervision or control of a minor child as established by law or court order;

(11) "Protective payee" means a caretaker relative as or a legal guardian of the child; provided, however, that person defined as a caretaker relative or guardian who is the applicant of TANF benefits who tests positive for the use of a drug as defined in this part shall be excepted from this definition; and

(12) "Specimen" means tissue, fluid or a product of the human body capable of revealing the presence of drugs or their metabolites.

SECTION 3.

(a) The department of human services shall 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), or its successor program.

(b)

(1) Dependent children under the age of eighteen (18) are exempt from the drug-testing requirement pursuant to this part; provided, however, any minor parent who is an applicant for TANF benefits who does not live with a parent, legal guardian, or other adult caretaker relative must comply with the drug-testing requirements of this part.

(2) In a two-parent household, only one parent shall be required to undergo a drug test.

(c) The implementation shall occur in phases over a two (2) year period. The department shall report on the status of the implementation to the general health and welfare committee of the senate and the health and human resources committee of the house of representatives. The status reports shall be sent to the chairs of each committee quarterly beginning October 1, 2012 during the implementation period.

(d)

(1) The department shall consult with substance abuse treatment experts, as determined by the commissioner of human services, and shall develop appropriate screening techniques and processes that will establish reasonable cause that an applicant for TANF is using a drug as defined by this part and that can be used establish the necessary criteria to permit the department to require the applicant to undergo a urine-based five (5) panel drug test to be conducted by a drug testing agency.

(2) The applicant may inform the drug testing agency administering the test of any prescription or over-the-counter medication the person is taking. No drug for which an applicant has a current valid prescription shall be a basis for denial of TANF benefits pursuant to this part.

(3) Following an initial positive drug test, the applicant shall undergo a confirmation test using the same urine sample from the initial positive test prior to determination of TANF eligibility. The results of the confirmation test shall be used to determine final eligibility for TANF benefits.

(e) The department shall identify and select a screening tool such as the Substance Abuse Subtle Screening Inventory (SASSI) or such other screening techniques as part of the development of the screening technique that will be employed for this program.

(f)

(1) The department shall develop a plan for funding of the costs of the screening process, the urine-based drug testing process, any personnel and

information systems modification costs, and any other costs associated with the development and implementation of the testing process.

(2) The plan shall provide for funding from existing TANF or other funding available to the department, from appropriations requested by the department or from any combination of sources.

(g) The department shall develop a plan for any modification of its information systems necessary to properly track and report on the status of applicants who are screened and who must undergo testing as required by this part including a detailed analysis of costs for systems analysis, programming and testing of modifications and implementation dates for completion of the modifications.

(h) The drug testing plan shall require, at a minimum, the following:

(1) That the department shall establish a referral process for any applicant who tests positive to be referred to an appropriate treatment resource for drug abuse treatment or other resource by the department for an appropriate treatment period as determined by the department. The plan shall require evidence of on-going compliance during the treatment period. If the applicant is otherwise eligible during the treatment period, the applicant shall receive TANF benefits during the treatment period no longer than six (6) months.

(2) That refusal of an applicant who tests positive to enter a treatment plan or failure to complete the treatment plan shall result in ineligibility for TANF benefits for six (6) months.

(3) That at the conclusion of the treatment period the applicant shall be tested again using the urine-based five (5) panel drug test, and the plan shall require that upon re-testing, if the applicant tests positive for the use of drugs that is validated by a confirmation test, the applicant shall be ineligible for TANF benefits for six (6) months.

(4) That if the person tests positive for drugs in a subsequent drug test after the six (6) months disqualification period that person shall be ineligible to

receive TANF benefits for one (1) year from the date of the positive confirmation drug test.

(5) That if a caretaker relative is deemed ineligible for TANF benefits as a result of failing a drug test, the dependent child's eligibility for TANF benefits is not affected, and an appropriate protective payee shall be designated to receive TANF benefits on behalf of the child who is under sixteen (16) years of age.

SECTION 4.

The department shall submit to the general health and welfare committee of the senate and the health and human resources committee of the house of representatives its final plan and proposed rules for administration of the drug testing program for TANF applicants by January 15, 2014, and shall implement the drug testing program beginning July 1, 2014 based on the plan submitted, unless otherwise directed by law.

SECTION 5.

(a) All information, interviews, reports, statements, memoranda and drug test results, written or otherwise, received by the department as part of the drug testing program established by this part shall be confidential and not subject to disclosure, and may not be used or received in evidence, obtained in discovery or disclosed in any public or private proceedings, except in accordance with the administration of this part or the TANF or successor program, or in proceedings conducted pursuant to Title 37 concerning the protection or permanency of children or in adjudicating any claims or actions arising from the administration of this part, unless the person tested provides written consent permitting disclosure.

(b) Information regarding drug test results for tests administered pursuant to this part shall not be released to law enforcement authorities or used in any criminal proceeding against the applicant. Information released contrary to this section is inadmissible as evidence in a criminal proceeding.

(c) This section does not prohibit the department or a drug testing agency conducting a drug test from having access to an adult applicant's drug test information or

using the information when consulting with legal counsel in connection with actions brought under or related to this section, or when the information is relevant to its defense in a civil or administrative matter.

(d) This section does not prohibit the reporting of child abuse, child sexual abuse, or neglect or child pursuant to title 37, chapter 1, parts 4 or 6.

SECTION 6.

(a) The commissioner of human services is authorized to adopt rules, pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, necessary for the administration of this part, and shall have rulemaking authority to promulgate any rules to carry out the requirements of any title or part of any title that the department administers and that are necessary to immediately implement the provisions of this part or related titles or parts

(b) In promulgating rules, the commissioner shall consider, at a minimum:

(1) Testing procedures established by the United States departments of health and human services and transportation;

(2) Screening procedures established by substance abuse experts to determine that a person exhibits the criteria to determine that there is reasonable cause to suspect that a person is likely to use drugs as defined in this part;

(3) Body specimens and minimum specimen amounts that are appropriate for drug testing;

(4) Methods of analysis and procedures to ensure reliable drug testing results, including standards for initial tests and confirmation tests;

(5) Minimum cut-off detection levels for each drug or metabolites of the drug for the purposes of determining a positive test result;

(6) Chain-of-custody procedures to ensure proper identification, labeling and handling of specimens tested; and

(7) Retention, storage and transportation procedures to ensure reliable results of drug tests used in the administration of this part.

SECTION 7.

An applicant whose drug test result is confirmed as positive in accordance with this part shall not, because of that result alone, be deemed to have a handicap or disability as defined under federal, state or local handicap and disability discrimination laws.

SECTION 8.

If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 9. This act shall take effect on July 1, 2012, the public welfare requiring it.