

1 State of Arkansas
2 90th General Assembly
3 Regular Session, 2015

A Bill

HOUSE BILL 1924

4
5 By: Representative Miller

For An Act To Be Entitled

8 AN ACT TO ESTABLISH THE DRUG TESTING ACT OF 2015; TO
9 REQUIRE APPLICANTS AND RECIPIENTS OF PUBLIC BENEFITS
10 TO UNDERGO DRUG TESTING; AND FOR OTHER PURPOSES.

Subtitle

14 TO ESTABLISH THE DRUG TESTING ACT OF
15 2015.

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18 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

19
20 SECTION 1. Arkansas Code Title 20, Chapter 76, is amended to add an
21 additional subchapter to read as follows:

Subchapter 7 – Drug Testing Act of 2015

20-76-701. Title.

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25 This act shall be known and may be cited as the “Drug Testing Act of
26 2015”.

20-76-702. Definitions.

29 As used in this subchapter:

30 (1) "Caretaker relative" means any of the following individuals
31 living with a minor child:

32 (A) A parent or stepparent;

33 (B) A grandparent;

34 (C) A sibling, half-sibling, or stepsibling;

35 (D) An aunt or uncle of any degree;

36 (E) A first cousin, nephew, or niece; and



1 (F) A relative by adoption within the previously named
2 classes;

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

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

13 (4)(A) "Drug" means marijuana, cocaine, methamphetamine,
14 amphetamine, and opiates including without limitation morphine.

15 (B) The Director of the Office of Medicaid Inspector
16 General may add additional drugs by rule;

17 (5) "Drug test" means any chemical, biological, or physical
18 instrumental analysis administered by a drug testing agency authorized to
19 test under this subchapter for the purpose of determining the presence or
20 absence of a drug or its metabolites;

21 (6) "Drug testing agency" means an entity that has the required
22 credentials as established by the Office of Medicaid Inspector General to
23 administer drug tests using a person's urine, blood, or DNA that will detect
24 and validate the presence of drugs in a person's body;

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

28 (8) "Five-panel test" means a test for marijuana, cocaine,
29 methamphetamine, amphetamine, and opiates, including without limitation
30 morphine;

31 (9) "Initial drug test" means a procedure that qualifies as a
32 screening test or initial test as implemented by the Office of Medicaid
33 Inspector General;

34 (10) "Protective payee" means a caretaker relative or legal
35 guardian of a minor child unless the caretaker relative who is an applicant
36 for public benefits receives a positive result on a drug test; and

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

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4 20-76-703. Administration.

5 (a) The Office of Medicaid Inspector General shall develop a plan to
6 implement a program of suspicion-based drug testing for each applicant who is
7 otherwise eligible for public benefits, including without limitation:

8 (1) The Temporary Assistance for Needy Families Program; and

9 (2) The Supplemental Nutrition Assistance Program, formerly
10 known as food stamps, of the Department of Human Services.

11 (b) A dependent child under eighteen (18) years of age is exempt from
12 the drug testing requirement unless the dependent child is a parent who is
13 also an applicant for the public benefits and who does not live with a
14 parent, legal guardian, or other adult caretaker relative.

15 (c) In a two-parent household, only one (1) parent shall be required
16 to undergo a drug test.

17 (d)(1) An applicant may inform the drug testing agency administering
18 the test of any prescription or over-the-counter medication that the
19 individual is taking.

20 (2) An applicant shall not be denied public benefits on the
21 basis of failing a drug test if the applicant has a current and valid
22 prescription for the drug in question.

23 (e)(1) An applicant shall undergo a confirmation test using the same
24 urine sample from the initial positive test prior to receiving public
25 benefits.

26 (2) The results of the confirmation test shall be used to
27 determine final eligibility for public benefits.

28 (f) The implementation of the drug-testing program shall occur in
29 phases over a period of two (2) years.

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31 20-76-704. Powers and duties.

32 (a) The Office of Medicaid Inspector General shall:

33 (1) Report the status of the drug-testing program implementation
34 to the chair of the Senate Committee on Public Health, Welfare, and Labor and
35 to the chair of the House Committee on Public Health, Welfare, and Labor
36 beginning on or after October 1, 2015;

1 (2) Consult with substance abuse treatment experts;

2 (3) Develop appropriate screening techniques and processes to
 3 establish reasonable cause that an applicant is using a drug and to establish
 4 the necessary criteria to permit the office to require the applicant to
 5 undergo a urine-based five-panel drug test;

6 (4) Identify and select a screening tool such as the Substance
 7 Abuse Subtle Screening Inventory or other screening techniques as part of the
 8 development of the screening technique that will be employed for the drug
 9 testing program under this subchapter;

10 (5) Develop a plan for funding the costs of the screening
 11 process, the urine-based five-panel drug testing process, any personnel and
 12 information systems modification costs, and any other costs associated with
 13 the development and implementation of the testing process; and

14 (6) Develop a plan for any modification of its information
 15 systems necessary to properly track and report the status of applicants who
 16 are screened and who must undergo testing as required by this subchapter,
 17 including without limitation a detailed analysis of costs for systems
 18 analysis, programming, and testing of modifications and implementation dates
 19 for completion of the modifications.

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 21 20-76-705. Standards in the drug treatment plan.

22 The drug treatment plan shall include without limitation:

23 (1)(A) A referral process for any applicant who receives a
 24 positive result on a drug test to be referred to an appropriate treatment
 25 resource for drug abuse treatment or other resource by the Office of Medicaid
 26 Inspector General for an appropriate treatment period as determined by the
 27 office.

28 (B) Evidence of ongoing compliance during the determined
 29 treatment period shall be required.

30 (C) If an applicant is otherwise eligible during the
 31 treatment period, the applicant shall receive public benefits for six (6)
 32 months;

33 (2) A requirement that a refusal to enter a treatment plan or
 34 failure to complete the treatment plan by an applicant who receives a
 35 positive result on a drug test shall result in lack of eligibility for public
 36 benefits for six (6) months;

1 (3)(A) A requirement that an applicant be tested using the
2 urine-based five-panel drug test upon the conclusion of the determined
3 treatment period.

4 (B) If an applicant receives a positive result on the
5 urine-based five-panel drug test, the applicant shall be ineligible for
6 public benefits for six (6) months;

7 (4) A requirement that an individual who tests positive for a
8 drug as a result of a drug test under this subchapter shall:

9 (A) Continue to receive benefits for one month after the
10 date of the positive result of the drug test; and

11 (B)(i) Undergo a second drug test on or before the end of
12 the one-month period.

13 (ii) An individual who tests positive for a drug as
14 a result of the second drug test shall not receive any further state-
15 appropriate benefits;

16 (5) A requirement that an applicant who receives a subsequent
17 positive result on a drug test after a six-month disqualification period
18 shall be ineligible for public benefits for one (1) year from the date of the
19 positive confirmation drug test; and

20 (6)(A) A requirement that a dependent child's eligibility for
21 public benefits shall not be affected by a caretaker relative's ineligibility
22 due to positive results on a drug test.

23 (B) An appropriate protective payee shall be designated to
24 receive public benefits on behalf of the dependent child.

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26 20-76-706. Information regarding drug testing.

27 (a) All information, interviews, reports, statements, memoranda, and
28 drug test results, written or otherwise, received by the Office of Medicaid
29 Inspector General as a part of the drug testing program under this subchapter
30 shall be confidential and not subject to disclosure and may not be used or
31 received in evidence, obtained in discovery, or disclosed in any public or
32 private proceedings.

33 (b)(1) Information regarding drug test results for a test administered
34 under this subchapter shall not be released to law enforcement officers or
35 used in any criminal proceeding.

36 (2) Information released contrary to this subsection (b) is

1 inadmissible as evidence in a criminal proceeding.

2 (c) This subchapter does not prohibit:

3 (1) The Office of Medicaid Inspector General or a drug testing
 4 agency conducting the drug test from having access to an adult applicant's
 5 drug test information or using the information when consulting with legal
 6 counsel in connection with actions brought under or related to this
 7 subchapter or when the information is relevant to its defense in a civil or
 8 administrative matter; or

9 (2) The reporting of child abuse, child sexual abuse, or neglect
 10 of a child.

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 12 20-76-707. Positive drug test result not a disability.

13 An applicant who receives a positive result on a drug test administered
 14 under this subchapter shall not be deemed to have a disability because of the
 15 drug test result alone.

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 17 20-76-708. Rule-making authority.

18 (a) The Director of the Office of Medicaid Inspector General shall
 19 promulgate rules necessary for the implementation of this subchapter.

20 (b) The director shall consider the following when promulgating rules:

21 (1) Testing procedures established by the United States
 22 Department of Health and Human Services and the United States Department of
 23 Transportation;

24 (2) Screening procedures established by the substance abuse
 25 experts to determine when a person exhibits the criteria to determine that
 26 there is reasonable cause to suspect that a person is likely to use drugs;

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

29 (4) Methods of analysis and procedures to ensure reliable drug
 30 testing results, including without limitation standards for initial tests and
 31 confirmation tests;

32 (5) Minimum cut-off detection levels for each drug or drug
 33 metabolite for the purpose of determining a positive result;

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

36 (7) Retention, storage, and transportation procedures to ensure

1 reliable results of drug tests used in the administration of this subchapter.

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3 SECTION 2. DO NOT CODIFY. EFFECTIVE DATE. This act shall become
4 effective on and after January 1, 2016.

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