

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.

3.4 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. 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 arraigned 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 on 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 satisfactory 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.