

HOUSE BILL 2725

By Hurley

AN ACT to amend Tennessee Code Annotated, Title 4, Chapter 3, Part 12; Title 4, Chapter 3, Part 18 and Title 71, relative to drug tests as a condition of receiving public assistance.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 71, Chapter 5, is amended by adding Sections 2 through 10 as a new part thereto.

SECTION 2. For the purposes of this part:

(1) "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;

(2) "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;

(3) "Drug" means any controlled substance subject to testing pursuant to drug testing regulations adopted by the United States department of transportation. The commissioner of human services may add additional drugs by rule;

(4) "Drug rehabilitation program" means a service provider that provides confidential, timely and expert identification, assessment and resolution of employee drug or alcohol abuse;

(5) “Drug test” or “test” means any chemical, biological or physical instrumental analysis administered by a laboratory 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 governing drug testing adopted by the United States department of transportation or other recognized authority approved by rule by the commissioner of human services;

(6) “Initial drug test” means a procedure that qualifies as a “screening test” or “initial test” pursuant to regulations governing drug testing adopted by the United States department of transportation or other recognized authority approved by rule by the commissioner of human services; and

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

### SECTION 3.

(a) To the extent not prohibited by federal law, the department of human services shall implement a program of substance abuse testing for each adult applicant who is otherwise eligible for temporary assistance for needy families referred to in this part as (TANF), or a successor program. The department shall require a the results of a recent urine drug test be submitted by each individual who applies for TANF. The cost of drug testing is the responsibility of the individual tested.

(b) Each individual to be tested, before the test is conducted, shall be notified that the individual may, but is not required to, advise the agent administering the test of any prescription or over-the-counter medication the individual is taking.

(c) Each individual to be tested shall be required to sign a written acknowledgment that such individual has received and understood the notice and advice provided under subsections (a) and (b).

(d) No drug for which an applicant has a current valid prescription shall be ground for denial of TANF benefits pursuant to this section.

(e) Each adult applicant who applies for TANF benefits shall be notified that submitting to a test or tests for the purpose of determining the drug content in such adult applicant is voluntary and that the results of such test or tests are not admissible in any court of law and shall not be used for any other purpose other than in consideration of eligibility for TANF benefits pursuant to this part.

(f) An individual who tests positive for controlled substances as a result of a drug test required under this section is ineligible to receive TANF for one (1) year from the date of the positive drug test unless the individual meets the requirements of subsection (j).

(g) If a specimen indicates a positive result for a drug for which the department tests, a second analysis of the same sample shall be conducted to confirm or reject the findings of the positive result. An adult applicant may not be denied TANF benefits on the sole basis of a positive test result that has not been verified by a confirmation test. The cost of a confirmation test shall be borne by the laboratory conducting the confirmation test.

(h) The department shall:

(1) Provide notice that the required drug testing may be avoided if the individual chooses to not apply for TANF. Dependent children under the age of eighteen (18) are exempt from the drug-testing requirement pursuant to this part;

(2) Require that for two-parent families, one (1) parent must comply with the drug-testing requirement;

(3) Require that any teen parent who is not required to live with a parent, legal guardian, or other adult caretaker relative must comply with the drug-testing requirement;

(4) Notify each individual being tested of:

(A) The types of drug testing an adult applicant to which may be required to submit; and

(B) A list of all drug classes for which the department may test;

(5) Specify circumstances under which an individual who fails a drug test has the right to take one (1) or more additional tests.

(6) Inform an individual who tests positive for a controlled substance and is deemed ineligible for TANF benefits that such individual may reapply for TANF benefits one (1) year from the date of the positive drug test unless the individual meets the requirements of subsection (j). If the individual tests positive after one (1) year, such individual is ineligible to receive TANF benefits for three (3) years from the date of the initial application for TANF benefits that was denied due to a positive drug test, unless the individual meets the requirements of subsection (j); and

(7) Provide any individual who tests positive with a list of substance abuse treatment providers who are licensed by this state. Neither the department nor the state is responsible for providing or paying for substance abuse treatment as part of any screening conducted under this section.

(j) An individual who tests positive under this section and is denied TANF benefits as a result may reapply for such benefits after six (6) months if the individual can document completion of a substance abuse treatment program and the taking of two

(2) drug tests at least thirty (30) days apart and not testing positive for controlled substances in either of such drug tests.

SECTION 4. If a parent is deemed ineligible for TANF benefits as a result of failing a drug test conducted under Section 3 of this act:

- (1) The dependent child's eligibility for public assistance benefits is not affected;
- (2) An appropriate protective payee shall be designated to receive benefits on behalf of the child; and
- (3) The department shall designate a protective payee who will receive TANF funds on behalf of any child who is under the age of sixteen (16). A protective payee may include:

- (A) A relative or other individual who is interested in or concerned with the welfare of the child and agrees in writing to utilize TANF funds in the best interest of such child;

- (B) A member of the community affiliated with a religious, community, neighborhood or charitable organization who agrees in writing to utilize the assistance in the best interest of the child; or

- (C) A volunteer who agrees in writing to fulfill the role of protective payee and utilize the assistance in the best interest of the child.

SECTION 5. All drug tests conducted pursuant to Section 3 shall be performed by diagnostic companies approved by the department. Information about diagnostic companies that offer such tests shall be provided to every adult applicant who applies for TANF benefits.

SECTION 6.

- (a) All information, interviews, reports, statements, memoranda and drug test results, written or otherwise, received by the department through a drug testing program are confidential communications and may not be used or received in evidence, obtained

in discovery or disclosed in any public or private proceedings, except in accordance with this section or in determining eligibility under this part.

(b) Employees of the department, laboratories and drug rehabilitation programs and their agents who receive or have access to information concerning drug test results shall keep all such information confidential. Release of such information under any other circumstance is authorized solely pursuant to a written consent form signed voluntarily by the person tested, unless the release is relevant to a legal claim asserted by the applicant for TANF benefits. The consent form shall contain, at a minimum:

- (1) The name of the person who is authorized to obtain the information;
- (2) The purpose of the disclosure;
- (3) The precise information to be disclosed;
- (4) The duration of the consent; and
- (5) The signature of the person authorizing release of the information.

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

(d) This section does not prohibit the department or a laboratory 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.

(e) This section does not prohibit the reporting of child abuse or child sexual abuse pursuant to § 37-1-403.

SECTION 7. The department shall not accept initial or confirmation specimen tests pursuant to this part unless the laboratory conducting testing on such specimens is licensed and approved by the department of health or the laboratory is certified by the United States department of health and human services, the College of American Pathologists or other recognized authority approved by rule by the commissioner of health.

SECTION 8. The commissioner of human services is authorized to adopt rules, using the rules and guidelines adopted by the department of health and criteria established by the United States department of health and human services and the United States department of transportation as guidelines for modeling the drug testing program pursuant to this part. The commissioner shall consider:

- (1) Body specimens and minimum specimen amounts that are appropriate for drug testing;
- (2) Methods of analysis and procedures to ensure reliable drug testing results, including standards for initial tests and confirmation tests;
- (3) Minimum cut-off detection levels for each drug or metabolites of the drug for the purposes of determining a positive test result;
- (4) Chain-of-custody procedures to ensure proper identification, labeling and handling of specimens tested; and
- (5) Retention, storage and transportation procedures to ensure reliable results on confirmation tests and retests.

SECTION 9. An adult applicant whose drug test result is confirmed as positive in accordance with this part shall not, by virtue of the result alone, be deemed to have a handicap or disability as defined under federal, state or local handicap and disability discrimination laws.

SECTION 10. The department shall have rulemaking authority pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, to promulgate any rules 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 section to effectuate any federal legislative changes.

SECTION 11. 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 12. For purposes of developing the program and rulemaking this act shall take effect upon becoming a law, the public welfare requiring it. For all other purposes this act shall take effect on January 1, 2013, the public welfare requiring it.