

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas  
90th General Assembly  
Regular Session, 2015

# A Bill

HOUSE BILL 1924

By: Representative Miller

## For An Act To Be Entitled

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

## Subtitle

TO ESTABLISH THE DRUG TESTING ACT OF 2015.

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

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

### Subchapter 7 – Drug Testing Act of 2015

#### 20-76-701. Title.

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

#### 20-76-702. Definitions.

As used in this subchapter:

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

- (A) A parent or stepparent;
- (B) A grandparent;
- (C) A sibling, half-sibling, or stepsibling;
- (D) An aunt or uncle of any degree;
- (E) A first cousin, nephew, or niece; and



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

(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 materials or substances, providing accountability at each stage in handling, testing, storing specimens, and reporting test results;

(3) "Confirmation test" means a second analytical procedure used to identify the presence of a specific drug or drug 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)(A) "Drug" means marijuana, cocaine, methamphetamine, amphetamine, and opiates including without limitation morphine.

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

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

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

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

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

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

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

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

20-76-703. Administration.

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

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

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

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

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

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

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

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

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

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

20-76-704. Powers and duties.

(a) The Office of Medicaid Inspector General shall:

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

(2) Consult with substance abuse treatment experts;

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

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

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

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

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

The drug treatment plan shall include without limitation:

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

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

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

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

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

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

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

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

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

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

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

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

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

20-76-706. Information regarding drug testing.

(a) All information, interviews, reports, statements, memoranda, and drug test results, written or otherwise, received by the Office of Medicaid Inspector General as a part of the drug testing program under this subchapter 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.

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

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

inadmissible as evidence in a criminal proceeding.

(c) This subchapter does not prohibit:

(1) The Office of Medicaid Inspector General or a drug testing agency conducting the 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 subchapter or when the information is relevant to its defense in a civil or administrative matter; or

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

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

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

20-76-708. Rule-making authority.

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

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

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

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

(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 without limitation standards for initial tests and confirmation tests;

(5) Minimum cut-off detection levels for each drug or drug metabolite for the purpose of determining a positive 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 subchapter.

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