

By Representative Lynn

1 A bill to be entitled
2 An act relating to public assistance; creating
3 s. 414.0951, F.S.; providing for drug testing
4 of applicants for and participants in WAGES,
5 Medicaid, and other public assistance programs,
6 under the Department of Children and Family
7 Services; providing definitions; providing
8 state policy on drug testing; providing
9 expected outcome and objectives; providing for
10 standards; requiring certain notice to
11 applicants and participants; specifying types
12 of drug testing the department is authorized to
13 conduct; providing for the costs of drug
14 testing and drug abuse treatment; requiring
15 certain confirmation of positive test results;
16 providing procedures for drug testing,
17 notification of test results, retesting, and
18 challenge of test results; prohibiting an
19 applicant or participant from participating in
20 work activities or support services or
21 receiving benefits, under specified conditions;
22 providing conditions for reinstatement of an
23 applicant or participant; providing certain
24 protections; providing for hearing and appeal
25 of department decisions; providing that federal
26 requirements preempt state law and rules;
27 authorizing the department to adopt rules;
28 providing for review of federal law and
29 application for waivers; providing an effective
30 date.
31

1 Be It Enacted by the Legislature of the State of Florida:

2

3 Section 1. Section 414.0951, Florida Statutes, is
4 created to read:

5 414.0951 Drug testing of applicants for and
6 participants in WAGES, Medicaid and other public assistance
7 programs.--

8 (1) DEFINITIONS.--As used in this section:

9 (a) "Applicant" means:

10 1. An individual who applies to participate in the
11 temporary family assistance program or WAGES program and
12 submits a signed and dated application; or

13 2. An individual whose written application for medical
14 assistance provided by Medicaid under ss. 409.903-409.906 has
15 been submitted, but has not received final action.

16 (b) "Cannabis" means all parts of any plant of the
17 genus Cannabis, whether growing or not; the seeds thereof; the
18 resin extracted from any part of the plant; and every
19 compound, manufacture, salt, derivative, mixture, or
20 preparation of the plant or its seeds or resin.

21 (c) "Confirmation test," "confirmed test," or
22 "confirmed drug test" means a second analytical procedure used
23 to identify the presence of a specific drug or metabolite in a
24 specimen. The confirmation test must be different in
25 scientific principle from that of the initial test procedure.
26 This confirmation method must provide requisite specificity,
27 sensitivity, and quantitative accuracy.

28 (d) "Controlled substance" means any substance named
29 or described in Schedules I and II of s. 893.03. Laws
30 controlling the manufacture, distribution, preparation,

31

1 dispensing, or administration of such substances are drug
2 abuse laws.

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

9 (f) "Department" means the Department of Children and
10 Family Services.

11 (g) "Drug test," "drug testing," or "test" means any
12 chemical, biological, or physical instrumental analysis
13 administered for determining the presence or absence of a
14 controlled substance, including cocaine, marijuana,
15 amphetamines, barbiturates, and opiates.

16 (h) "Initial drug test" means a sensitive, rapid, and
17 reliable procedure to identify negative and presumptive
18 positive specimens. All initial tests shall use an immunoassay
19 procedure or an equivalent, or shall use a more accurate
20 scientifically accepted method approved by the Agency for
21 Health Care Administration as more accurate technology becomes
22 available in a cost-effective form.

23 (i) "Participant" means:

24 1. An individual who receives temporary assistance,
25 cash payment, or support services under the WAGES program; or

26 2. An individual who receives cash payments or other
27 benefits under the Medicaid program.

28 (j) "Prescription or nonprescription medication" means
29 a drug or medication obtained pursuant to a prescription, as
30 defined by s. 893.02, or a medication that is authorized
31 pursuant to federal or state law for general distribution and

1 use without a prescription in the treatment of human diseases,
2 ailments, or injuries.

3 (k) "Reasonable-suspicion drug testing" means drug
4 testing based on a belief that an applicant or participant is
5 using or has used a controlled substance or cannabis in
6 violation of this section and department policy, which belief
7 is based on specific objective and articulable facts and
8 reasonable inferences drawn from those facts in light of
9 experience. Reasonable-suspicion drug testing shall not be
10 required except upon the recommendation of a department
11 employee determining the eligibility of the applicant or
12 providing or arranging services to the participant, with a
13 concurring recommendation by a supervisor of the employee who
14 is at least one level of supervision higher than the employee.
15 Among other data, such facts and inferences may be based upon:

16 1. Observable phenomena during the application process
17 or during a work activity, such as direct observation of drug
18 use or of the physical symptoms or manifestations of being
19 under the influence of a drug.

20 2. Abnormal conduct, erratic behavior, or a
21 significant deterioration in work performance during the
22 application process or during a work activity.

23 3. A report stating that the applicant or participant
24 has used a controlled substance or cannabis, provided by a
25 reliable and credible source, which has been independently
26 corroborated.

27 4. Evidence that the applicant or participant has
28 tampered with a drug test during a work activity with the
29 current employer.

30
31

1 5. Evidence that the applicant or participant has
2 used, possessed, sold, solicited, or transferred a controlled
3 substance or cannabis.

4 (1) "Specimen" means a tissue, hair, or product of the
5 human body capable of revealing the presence of drugs or their
6 metabolites.

7 (2) STATE POLICY ON DRUG TESTING.--

8 (a) Drug testing of an applicant or participant as
9 provided for in this section shall not be conducted until
10 local drug abuse treatment programs have been identified and
11 are available.

12 (b) When there is a reasonable suspicion as described
13 in paragraph (1)(k) that an applicant or participant is using
14 or has used drugs in violation of this section, the applicant
15 or participant shall submit to drug testing as a condition of
16 initial or continued participation in program activities and
17 receipt of benefits.

18 (c) When there is positive confirmation as a result of
19 laboratory testing that the applicant or participant has used
20 or is using drugs, the department shall provide appropriate
21 drug abuse treatment services to assist the applicant or
22 participant to fulfill the required work activities of the
23 WAGES program or other applicable program requirements.

24 (d) When there is refusal by the applicant or
25 participant to submit to drug testing, the department shall
26 prohibit the applicant or participant from initial or
27 continued participation in program activities and receipt of
28 benefits until such time as the applicant or participant
29 submits to drug testing or until such time as there is no
30 longer reasonable suspicion that the applicant or participant
31 has used or is using drugs in violation of this section.

1 (3) EXPECTED OUTCOME AND OBJECTIVES.--The expected
2 outcome of the implementation of this section is to reduce the
3 incidence of drug abuse by individuals who apply for and
4 receive services from the state. The primary objective of this
5 section is to provide an individual the opportunity to receive
6 treatment for an identified drug problem, so that the
7 individual may more rapidly secure economic independence.
8 Other objectives of this section are to reduce the incidence
9 of health problems and social problems associated with drug
10 use in the target population and to reduce the cost to the
11 state of addressing health problems and social problems
12 associated with drug use in the target population.

13 (4) STANDARDS.--

14 (a) Drug testing conducted by the department pursuant
15 to this section shall conform with the standards established
16 in this section and applicable rules adopted pursuant to this
17 section.

18 (b) A laboratory may analyze initial or confirmation
19 drug test specimens only if the laboratory is licensed and
20 approved by the Agency for Health Care Administration using
21 criteria established by the United States Department of Health
22 and Human Services as general guidelines for modeling state
23 drug testing programs.

24 (5) NOTICE TO APPLICANTS AND PARTICIPANTS.--

25 (a) The department shall include notice of drug
26 testing on the application for services.

27 (b) Prior to testing, the applicant or participant
28 shall be given a written policy statement from the department
29 that contains:

30 1. A statement of state policy on drug testing that
31 identifies:

1 a. The types of testing an applicant or participant
2 may be required to submit to, including reasonable-suspicion
3 drug testing or testing on some other basis.

4 b. The actions the department may take against an
5 applicant or participant on the basis of a positive confirmed
6 drug test result.

7 2. A statement concerning confidentiality.

8 3. Procedures for the applicant or participant to
9 confidentially report the use of prescription or
10 nonprescription medications both before and after being
11 tested. Additionally, applicants and participants shall
12 receive notice of the most common medications by brand name or
13 common name, as applicable, as well as by chemical name, which
14 may alter or affect a drug test. A list of such medications
15 shall be developed by the Agency for Health Care
16 Administration.

17 4. The consequences of refusing to submit to a drug
18 test.

19 5. A statement that an applicant or participant who
20 receives a positive confirmed drug test result may challenge
21 or explain the result to the department within 5 working days
22 after written notification of the positive test result. If the
23 applicant's or participant's explanation or challenge is
24 unsatisfactory to the department, the applicant or participant
25 may appeal the department's decision as provided in subsection
26 (13).

27 6. A statement informing the applicant or participant
28 of his or her responsibility to notify the laboratory of any
29 administrative or civil actions brought pursuant to this
30 section.

31

1 7. A list of all drugs for which the department will
2 test, described by brand names or common names, as applicable,
3 as well as by chemical names.

4 8. A statement notifying the applicant or participant
5 of his or her right to consult the testing laboratory for
6 technical information regarding prescription and
7 nonprescription medications.

8 (c) When testing is conducted based on reasonable
9 suspicion, the department shall promptly detail in writing the
10 circumstances which formed the basis of the determination that
11 reasonable suspicion to warrant the testing existed. A copy of
12 this documentation shall be given to the applicant or
13 participant upon request, and the original documentation shall
14 be retained by the department.

15 (6) TYPES OF DRUG TESTING.--The department is
16 authorized, but not required, to conduct the following types
17 of drug testing:

18 (a) The department may require an applicant or
19 participant to submit to reasonable-suspicion drug testing.

20 (b) If the applicant or participant, in the course of
21 program participation, enters a drug treatment program, the
22 department may require the applicant or participant to submit
23 to followup drug testing.

24 (7) COST OF TESTING AND TREATMENT.--

25 (a) The department shall pay the cost of all drug
26 tests, initial and confirmation, which the department requires
27 of applicants or participants.

28 (b) The department shall pay the cost of all drug
29 abuse treatment which the department requires an applicant or
30 participant to complete.

31

1 (c) An applicant or participant shall pay the cost of
2 any additional drug tests not required by the department.

3 (8) CONFIRMATION TESTING.--

4 (a) If an initial drug test is negative, the
5 department may in its sole discretion and at the department's
6 expense seek a confirmation test.

7 (b) Only licensed laboratories as described in
8 subsection (4) shall conduct confirmation drug tests.

9 (c) All positive initial tests shall be confirmed
10 using gas chromatography/mass spectrometry or an equivalent or
11 more accurate scientifically accepted method approved by the
12 Agency for Health Care Administration as such technology
13 becomes available in a cost-effective form.

14 (9) PROCEDURES FOR DRUG TESTING; NOTIFICATION OF TEST
15 RESULTS; RETESTING; CHALLENGE TO TEST RESULTS.--All specimen
16 collection and testing for drugs under this section shall be
17 performed in accordance with the following procedures:

18 (a) A sample shall be collected with due regard to the
19 privacy of the individual providing the sample and in a manner
20 reasonably calculated to prevent substitution or contamination
21 of the sample.

22 (b) Specimen collection shall be documented, and the
23 documentation procedures shall include:

24 1. Labeling of specimen containers so as to reasonably
25 preclude the likelihood of erroneous identification of test
26 results.

27 2. A form for the applicant or participant to provide
28 any information he or she considers relevant to the test,
29 including identification of currently or recently used
30 prescription or nonprescription medications, or other relevant
31 medical information. The form shall provide notice of the most

1 common medications that may alter or affect a drug test by
2 brand name or common name, as applicable, as well as by
3 chemical name. The providing of such information shall not
4 preclude the administration of the drug test, but shall be
5 taken into account in interpreting any positive confirmed test
6 results.

7 (c) Specimen collection, storage, and transportation
8 to the testing site shall be performed in a manner which will
9 reasonably preclude specimen contamination or adulteration.

10 (d) Each initial and confirmation test conducted under
11 this section, not including the taking or collecting of a
12 specimen to be tested, shall be conducted by a licensed
13 laboratory as described in subsection (4).

14 (e) A specimen for a drug test may be taken or
15 collected by any of the following persons:

16 1. A physician, a physician assistant, a registered
17 professional nurse, a licensed practical nurse, a nurse
18 practitioner, or a certified paramedic who is present at the
19 scene of an accident for the purpose of rendering emergency
20 medical service or treatment.

21 2. A qualified person employed by a licensed
22 laboratory.

23 (f) A person who collects or takes a specimen for a
24 drug test conducted pursuant to this section shall collect an
25 amount sufficient for two drug tests, as determined by the
26 Agency for Health Care Administration.

27 (g) Any drug test conducted or requested by the
28 department may occur before, during, or immediately after the
29 application process, participation in a work activity, or
30 receipt of benefits by the applicant or participant.

31

1 (h) Every specimen that produces a positive confirmed
2 test result shall be preserved by the licensed laboratory that
3 conducts the confirmation test for a period of at least 210
4 days after the time the results of the positive confirmation
5 test are mailed or otherwise delivered to the employer.
6 However, if an applicant or participant undertakes an
7 administrative or legal challenge to the test result, the
8 applicant or participant shall notify the laboratory and the
9 sample shall be retained by the laboratory until the case or
10 administrative appeal is settled. During the 180-day period
11 after written notification of a positive confirmed test
12 result, the applicant or participant who has provided the
13 specimen shall be permitted by the department to have a
14 portion of the specimen retested at the applicant's or
15 participant's expense at another laboratory, chosen by the
16 applicant or participant, which is licensed and approved by
17 the Agency for Health Care Administration. The second
18 laboratory must test at equal or greater sensitivity for the
19 drug in question as the first laboratory. The first laboratory
20 which performed the test for the applicant or participant
21 shall be responsible for the transfer of the portion of the
22 specimen to be retested and for the integrity of the chain of
23 custody during such transfer.

24 (i) Within 5 working days after receipt of a positive
25 confirmed test result from the testing laboratory, the
26 department shall inform an applicant or participant in writing
27 of such positive confirmed test result, the consequences of
28 such result, and the options available to the applicant or
29 participant.

30 (j) The department shall provide to the applicant or
31 participant, upon request, a copy of the test result.

1 (k) Within 5 working days after receiving notice of a
2 positive confirmed test result, the applicant or participant
3 may submit information to the department explaining or
4 challenging the test result, and explaining why the result
5 does not constitute a violation of the state's and
6 department's policy.

7 (l) If an applicant's or participant's explanation or
8 challenge of the positive confirmed test result is
9 unsatisfactory to the department, a written explanation as to
10 why the applicant's or participant's explanation is
11 unsatisfactory, along with the report of result, shall be
12 provided by the department to the applicant or participant.
13 All such documentation shall be retained by the department for
14 at least 1 year.

15 (m) The department may not prohibit an applicant or
16 participant from work activities on the sole basis of a
17 positive test result that has not been verified by a
18 confirmation test.

19 (10) PROHIBITING AN APPLICANT OR PARTICIPANT FROM
20 PARTICIPATING IN WORK ACTIVITIES OR SUPPORT SERVICES, OR
21 RECEIVING BENEFITS.--The department shall prohibit an
22 applicant or participant from participating in work activities
23 or support services and from receiving any benefits when any
24 of the following apply:

25 (a) The applicant or participant has refused to submit
26 to drug testing.

27 (b) The applicant or participant has refused to
28 participate in a drug abuse treatment program.

29 (c) The applicant or participant has failed to
30 successfully complete a drug abuse treatment program, as
31 evidenced by withdrawal from the program before its completion

1 or by a report from the program indicating unsatisfactory
2 compliance or by a positive test result on a confirmation test
3 after completion of the program.

4 (d) The applicant or participant has failed or refused
5 to sign a written consent form allowing the department to
6 obtain information regarding the progress and successful
7 completion of the applicant or participant in a drug abuse
8 treatment program.

9 (11) CONDITIONS FOR REINSTATEMENT OF AN APPLICANT OR
10 PARTICIPANT.--The department shall reinstate an applicant or
11 participant into the program and allow participation in work
12 activities and support services and receipt of benefits when
13 any of the following apply:

14 (a) The applicant or participant agrees to submit to
15 drug testing.

16 (b) The applicant or participant participates in a
17 drug abuse treatment program.

18 (c) The applicant or participant successfully
19 completes a drug abuse treatment program, as evidenced by a
20 report from the program before its completion indicating
21 satisfactory compliance or by a negative test result on a
22 confirmation test after completion of the program.

23 (12) PROTECTIONS.--

24 (a) No applicant or participant whose drug test result
25 is confirmed as positive in accordance with the provisions of
26 this section shall, by virtue of the result alone, be defined
27 as a person with a "handicap" as cited in the 1973
28 Rehabilitation Act.

29 (b) No physician-patient relationship is created
30 between an applicant or participant and the department or any
31 person performing or evaluating a drug test, solely by the

1 establishment, implementation, or administration of a drug
2 testing program.

3 (c) Nothing in this section shall be construed to
4 require the department to provide a drug abuse treatment
5 program to an applicant or participant beyond the time limits
6 set for participation in the WAGES program pursuant to s.
7 414.105.

8 (13) OPPORTUNITY FOR HEARING AND APPEAL.--

9 (a) An applicant or participant may appeal a decision
10 to the department in the manner and form prescribed in this
11 section and as established in rule by the department.

12 (b) The hearing authority may be the secretary of the
13 department, a panel of department officials, or a hearing
14 officer appointed for that purpose. The hearing authority is
15 responsible for a final administrative decision in the name of
16 the department on all issues that have been the subject of a
17 hearing. With regard to the department, the decision of the
18 hearing authority is final and binding. The department is
19 responsible for seeing that the decision is carried out
20 promptly.

21 (c) A final order of administrative disqualification
22 based on the provisions of this section is subject to judicial
23 review in accordance with s. 120.68.

24 (14) FEDERAL COMPLIANCE.--The provisions in this
25 section do not apply when there are established requirements
26 related to drug testing pursuant to federal law or regulations
27 that specifically preempt state law or rules relating to drug
28 testing with respect to an applicant or participant.

29 (15) RULES.--The department may adopt rules to
30 administer the program provided for in this section. It is the
31 intent of the Legislature that the department adopt the

1 minimum rules that provide for clear and effective
2 implementation of this section.

3 (16) WAIVERS.--The department shall review applicable
4 federal law to determine whether or not federal waivers will
5 further the policy objectives of this section; if so, the
6 department may apply for such waivers.

7 Section 2. This act shall take effect October 1, 1997.

8
9 *****

10 HOUSE SUMMARY

11 Establishes a program of drug testing of applicants for
12 and participants in WAGES (Work and Gain Economic
13 Self-sufficiency), Medicaid, and other public assistance
14 programs, to be administered by the Department of
15 Children and Family Services. Provides state policy on
16 drug testing, specifies expected outcome and objectives
17 of the program, and provides for certain standards.
18 Requires certain notice to public assistance applicants
19 and participants regarding the drug testing program.
20 Specifies types of drug testing the department is
21 authorized to conduct. Requires the costs of initial and
22 confirmation testing, and of drug abuse treatment, to be
23 borne by the department. Requires certain confirmation
24 testing of positive test results. Provides procedures and
25 timeframes for drug testing, notification of test
26 results, retesting, and challenge of test results.
27 Prohibits an applicant or participant who has refused to
28 be tested, refused treatment, or failed to successfully
29 complete a treatment program from participating in work
30 activities or support services or receiving benefits.
31 Specifies conditions for reinstatement of such person in
a public assistance program. Provides procedures for
hearing and appeal of department decisions. Specifies
that federal drug testing requirements preempt state law
and rules. Directs the department to review applicable
federal law and apply for waivers, if appropriate. See
bill for details.