



North Carolina Department of Health and Human Services

Pat McCrory
Governor

Aldona Z. Wos, M.D.
Ambassador (Ret.)
Secretary DHHS

Adam Sholar
Legislative Counsel
Director of Government Affairs

April 1, 2014

SENT VIA ELECTRONIC MAIL

The Honorable Philip Berger,
President Pro Tempore
North Carolina Senate
2008 Legislative Building
Raleigh, NC 27601

The Honorable Thom Tillis,
Speaker
North Carolina House of Representatives
2304 Legislative Building
Raleigh, NC 27601

Dear Speaker Tillis and President Pro Tempore Berger:

In compliance with Session Law 2013-417, the Department of Health & Human Services is reporting on the *Implementation of Drug Screening & Testing for Work First Program Assistance* in accordance with Section 4 of that law which requires a drug test to screen each applicant for or recipient of Work First Program assistance the Department reasonably suspects is engaged in the illegal use of controlled substances.

This legislative report notes unique challenges related to multiple drug testing instruments with varying costs based on type and number of substances requiring identification. Attachment A to this report provides a list of implementation activities. Attachment B provides a fiscal summary of implementation costs along with accompanying fiscal notes for low, mid and high range drug testing instruments.

Please note that the Department engaged the Administration for Children and Families (ACF), the federal governing agency for TANF, regarding the use of TANF funds for drug testing but, despite early indications that TANF funds could be used, ACF has yet to provide definitive guidance to North Carolina on this matter.

Sincerely,

Adam Sholar

Cc: Senator Ralph Hise
Representative Justin Burr
Representative Mark Hollo
Denise G. Weeks

Sarah Riser
Pat Porter
Kristi Huff
Brandon Greife

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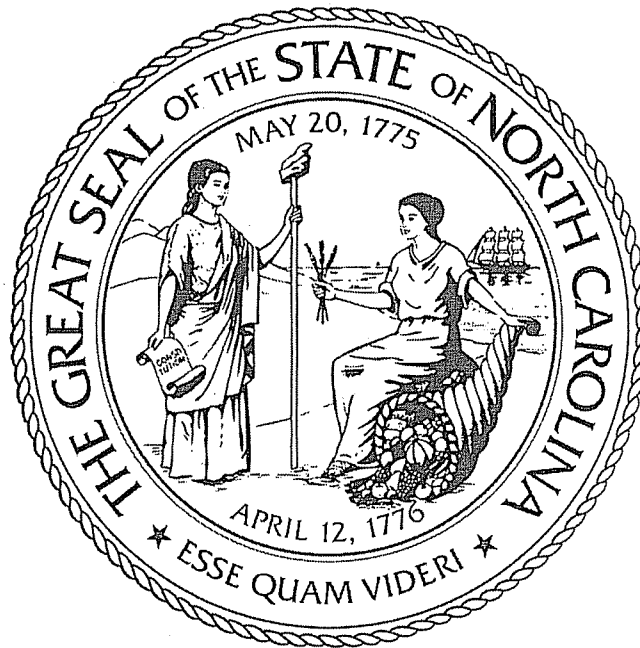


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**REPORT ON THE IMPLEMENTATION OF DRUG SCREENING &
TESTING FOR WORK FIRST PROGRAM ASSISTANCE**

PURSUANT TO SESSION LAW 2013-417



STATE OF NORTH CAROLINA

DEPARTMENT OF HEALTH AND HUMAN SERVICES

APRIL 1, 2014

Legislative Report Implementation of House Bill 392

Session Law 2013-417, Section 6 requires the Department of Health and Human Services to report no later than April 1, 2014 on the implementation of Section 4 of that same law, which requires a drug test to screen each applicant for or recipient of Work First Program assistance whom the Department reasonably suspects is engaged in the illegal use of controlled substances. This report provides a summary of the implementation effort by the Department.

North Carolina's Temporary Assistance for Needy Families (TANF) program, called Work First, promotes a strengths-based, family-centered practice. In accordance with federal law, TANF funds must meet one of four purposes. The four purposes under TANF are:

1. Assist needy families so that children may be cared for in their own homes or in the homes of relatives
2. End dependence of needy parents by promoting job preparation, work, and/or marriage
3. Prevent or reduce the incidence of out-of-wedlock pregnancies
4. Encourage the formation and maintenance of two-parent families

The Work First program is based on the premise that parents have a responsibility to support themselves and their children. The program provides parents with short-term training, cash assistance and other services to help them become employed and move toward self-sufficiency. Biological, adoptive parents and stepparents may apply for assistance for a child and must be included in the payment for the family, unless they are disqualified from the program. Other families where grandparents and relatives are caring for their relative children and legal guardians may apply for assistance on their behalf, but are not included in the cash assistance payment to the family. These cases are termed "Child Only" cases. Non parent caretakers can receive services and support which may prevent children from entering the foster care system unnecessarily.

Work First cash assistance is provided primarily for children. For State Fiscal Year 2012-2013 there was an average of 21,856 Work First cases, of those 68% were Child Only cases. This resulted in a monthly average of 7262 cases with an adult included in the cash assistance payment.

Attachment A of this report provides a list of implementation activities. Attachment B is the fiscal summary of implementation costs along with accompanying fiscal notes for low, mid and high range drug testing instruments.

S.L. 2013-417 has presented challenges as the Department works toward its implementation. The Department has been unable to identify available drug testing facilities or providers in all 100 counties. This may require the Department to initiate a contract for the provision of drug testing services to ensure all individuals have equal access, receive equitable treatment and promote procedural fidelity. The State level contracting process is very labor intensive and has a proscribed timeline.

As S.L. 2013-417 did not provide funds to support implementation, existing funds will have to be used to cover the initial and ongoing costs. The fiscal summary highlights that there are multiple drug testing instruments with varying costs based on type and number of substances requiring identification and the chain of custody for the results. Once the Department receives final guidance on the type of test and the substances for identification a request for proposal can

be issued which may result in lower cost. In addition enhancements are required to the North Carolina Families Accessing Services through Technology (NC FAST) automated case management system to support the eligibility determination process and reporting requirements as defined by law.

The Department is involved in conversation with the Administration for Children and Families (ACF), the federal governing agency for TANF, regarding the use of TANF funds for drug testing. While initially we were told that TANF funds may be used for drug testing, at this time, ACF has not provided definitive guidance. Currently, Medicaid covers the testing cost if the person is Medicaid eligible and the testing is ordered by a physician. If not billable to Medicaid, the cost is covered by Division of Mental Health, Development Disabilities and Substance Abuse Services(DMH/DD/SAS) funds designated for "DSS involved individuals". Since S.L. 2013-417 requires the drug testing of individuals prior to determination of eligibility it is questionable if it is an allowable cost for DMH/DD/SAS funds.

The Work First program shares in the mission of the North Carolina Department of Health and Human Services, in collaboration with its, partners, to protect the health and safety of all North Carolinians and provide essential human services. North Carolina's success thus far at helping families move from cash assistance to work has led to a broadened focus for the Work First Program. We remain committed to continuing our assistance to families to help ensure families' long-term success.

Implementation Activities for HB 392

Activities to Date

- Analyze, review and respond to each version of the introduced legislation.
- Internet based research for published documents outlining the challenges identified by other States who have implemented related legislation including research for State and National Repositories.
- Research identified States with Drug Testing policies. Reviewed legislation and policies of Arizona, South Carolina, Utah and Virginia.
- Conduct telephone interviews with Department officials in the identified States. Complete comparative analysis of data.
- Ongoing discussions and meetings with the Division of Mental Health, Development Disabilities and Substance Abuse Services.
- Research testing facilities, testing methods and review sample drug testing provider contracts.
- Drafted Administrative Rules – pending review
- TANF State Plan
Awaiting approval of the current TANF State Plan from the Administration for Children and Families (ACF), plan submitted in December 2013.
Amend TANF State plan to include drug testing requirements, submit and receive approval from ACF.

Next Steps

- Policy Development and implementation
- Establishment of drug testing protocols
- NC FAST Enhancements to support implementation and ongoing process
- Staff Training for 100 local county department of social services

Allocation of Administrative Hours based on Period beginning 3/2013 for 2 State staff members*

Activity	TIME SPENT
Review of Legislation and current policies	60 hours
Internet based Research	70 hours
Contact with TANF Colleagues	30 hours
Fiscal/ Statistical Data Request and analysis	60 hours
Internal/External Meetings	100 hours
Legislative Hearings	40 hours
Request for Information / Ad Hoc Reports	80 hours

**These hours continue to increase as the Division continues to work diligently towards implementation.*

HB 392 Fiscal Summary

The fiscal note provided is a conservative estimate of the cost to implement drug testing for all Work First adult applicants and recipients.

Type of Drug Test

A basic six panel drug test will identify the following:

1. Cannabinoids (marijuana, weed, hash, pot)
2. Cocaine (coke, crack)
3. Methamphetamines/amphetamines (speed, meth, crank)
4. Opiates (heroin, morphine, opium, codeine)
5. Phencyclidine (PCP)
6. Benzodiazepines (prescription sedatives- Xanax or Valium)

This 6 panel test does not identify hallucinogens (Angel dust, LSD, mushrooms), alcohol, ecstasy, steroids, hydrocodone (Lortab, oxycodone, Vicodin) or inhalants (paint, glue). The 6 panel drug test may range in cost from a minimum amount of \$38.00 to \$150.00 or greater. The average cost for drug testing is \$94.00 per applicant and recipient. The cost may be greater depending on the following:

1. The type of biochemical assay submitted (hair follicles, urinalysis, blood or saliva)
2. Observation/presence of a clinical professional during testing
3. The chain of custody for the test results
4. Confirmation testing if deemed necessary
5. An extended panel to identify additional substances.

For this fiscal summary, the average cost for drug testing is used. Three separate fiscal notes for the low, mid and high ranges are provided.

Cost for Identified Population

There were 71,298 applications and recertification of active cases for SFY 2011-2012 (this number includes individuals who were denied, withdrawn and/or approved). Based on data provided by the Division of Mental Health, Developmental Disabilities and Substance Abuse Services (DMH/DD/SAS for the 1st Quarter of SFY 2013-2014, 3.9% of Work First cases were referred to a Qualified Professional in Substance Abuse (QPSA) for further assessment of potential substance abuse. (DMH/DD/SAS did not track program specific data until July 2013.)

This would result in approximately 2,781 cases referred for drug testing with an average cost of \$94.00 per test, for a total of \$261,414.00.

According to the most recent census and U.S. Department of Agriculture data, for SFY 2011-2012 there are 9,848,060 individuals in North Carolina, of whom 1,099,948 adults are living in poverty. 41% are single-parent households with related children.

The data from the North Carolina Department of Corrections for SFY 2011-2012 shows there were 22,751 individuals (age 18 and above) with drug related convictions. That is approximately .27% of North Carolinians.

This could equate to an additional 2,970 families with drug related convictions potentially applying for Work First. At an average drug test cost of \$94.00, the total cost for individuals with a 3 year conviction/ drug charge would be \$279,180.00

NC FAST Enhancement Cost

The projected cost to enhance the North Carolina Families Accessing Services through Technology (NC FAST) automated case management system is \$125,750.00.

TOTALS:

Year One Cost: \$666,344.00 (Based on \$94.00 drug test)

Ongoing Annual Cost: \$540,594.00

(The initial fiscal analysis provided included drug testing for all Work First adult applicants and recipients instead of the specifically identified targeted population indicated in this summary.)

Administration for Children and Families Guidance

The Division received various responses from the Administration for Children and Families (ACF) which administers the Temporary Assistance for Needy Families (TANF) regarding implementing drug testing as a condition of eligibility. The responses are as follows:

April 23, 2013

Division: Are there any federal requirements that prohibit TANF Program from adding "drug testing" as an eligibility requirement for TANF cash assistance or non-cash assistance?

ACF: TANF statute and regulations do not directly address the question of drug testing as a condition of eligibility, but do require States to comply with the Americans with Disabilities Act, section 504 of the Rehabilitation Act, and Title VI of the Civil Rights Act. Naturally, all States laws are subject to constitutional scrutiny as well. There are States that have established such a test as a condition of eligibility for TANF.

Michigan's 1999 program of suspicion less drug testing of TANF recipients was suspended by the courts after operating only a few weeks, and Florida's recently implemented policy of testing applicants has been preliminarily enjoined. The primary issue is whether such testing violates the Constitution's Fourth Amendment prohibition against unreasonable searches and seizures, which prevents the indiscriminate searching of individuals.

The HHS Office of the Assistant Secretary for Planning and Evaluation recently published an issue brief on this topic, which may be found at <http://aspe.hhs.gov/hsp/11/DrugTesting/ib.shtml> . Also, there is nothing in the TANF Federal statute that prohibits the fee for the drug test.

January 9, 2014

Division: Can TANF Funds be used for drug testing if the drug test is a condition of eligibility?

January 10, 2014

ACF: No TANF funds can be used for TANF but the eligibility is questionable.

Division: Please provide clarification for the above response.

January 13, 2014

ACF: No TANF funds can be used for drug testing but there have been questions from another state which has led deeper conversations in Central Office. So the eligibility reasons have been in discussion since the early part of December.

The ACF fiscal specialist was asked if TANF funding could be used and she does not think it could. This is still in discussion in Central Office."

The Division continues to work toward determining the approximate administrative cost to develop policy and procedures, train local county staff, and the amount of time required for staff to explain to all applicants and participants information regarding the initial and ongoing implementation of the drug testing requirements.

OPERATING COSTS

Note: When providing costs for future years, please factor in the following annual CPI increases (Estimates based on consumer price index projections provided by Moody's economy.com (January 2013)):

	General	Gas	Fuel Oils	Medical Care
FY 2013-14	2.40%	5.15%	3.07%	4.22%
FY 2014-15	2.54%	3.68%	4.78%	4.04%
FY 2015-16	2.53%	1.92%	4.08%	4.02%
FY 2016-17	2.40%	2.36%	3.81%	4.04%
FY 2017-18	2.32%	1.64%	3.80%	3.98%

Account No.	Account Title	FY 2013-14	FY 2014-15	FY 2015-16	FY 2016-17	FY 2017-18
532xxx	PURCHASED SERVICES					
5321xx	Contractual Services	\$ 344,288.00	\$ 218,538	\$ 218,538	\$ 218,538	\$ 218,538
5322xx	Utility/Energy Services					
5323xx	Repair Services					
5324xx	Maintenance Agreements					
5325xx	Rentals/Leases					
5327xx	Travel					
5328xx	Communications & Data Processing					
5329xx	Other Services					
533XXX	SUPPLIES					
5331xx	General Admin Supplies					
5332xx	Facility & Hardware Supplies					
5333xx	Vehicle/Equipment Operating Supplies					
5335xx	Clothing and Recreational Supplies					
5336xx	Drugs/Pharmaceutical Supplies					
5337xx	Research/Development & Educational Supplies					
5338xx	Purchases for Resale					
5339xx	Other Materials and Supplies					
534XXX	PROPERTY, PLANT AND EQUIPMENT					
5341xx	Land*					
5342xx	Buildings - Purchased*					
5343xx	Buildings - Constructed*					
5344xx	Other Structures and Improvement*					
5345xx	Equipment (Furniture, Office Equip., Intangible Assets)					
535xxx	OTHER EXPENSES (please provide detail)					
Total		\$ 344,288	\$ 218,538	\$ 218,538	\$ 218,538	\$ 218,538

* Please attach detailed justification for capital purchases and any exceptional items such as large one-time purchases.

58,411	New Applications Filed in SFY 2011-2012
12,887	Recertifications Filed in SFY 2011-2012
71,298	Total
2,781	(3.9% of Work First Cases Referred for Drug Testing)
2970	.27% of potential cases with drug related convictions*
5751	Total subject to drug testing
\$ 38	Average Cost Per Drug Testing
\$ 218,538	Cost For Drug Testing

NC FAST Change Request Estimate Summary

Resource Requirements:	Hours	Cost
Functional Designers	125	\$15,625.00
Detail Designers	75	\$9,375.00
Build	156	\$19,500.00
Business – Cross	95	\$11,875.00
Testing Team	412	\$51,500.00
A/I Team	75	\$9,375.00
Curam Design Specialist	68	\$8,500.00
Totals:	1006	\$125,750.00

\$ 218,538	Total Potential Applicant/Recipient Costs
\$ 125,750	NC FAST Estimate
\$ 344,288.00	Total Potential Drug Testing Cost

Department of Corrections data shows .27% of NC general population with drug related criminal charges. Data received from DSS Performance Management , US Census Bureau and Department of Correction Research and Planning Automated System.

OPERATING COSTS

Note: When providing costs for future years, please factor in the following annual CPI increases (Estimates based on consumer price index projections provided by Moody's economy.com (January 2013)):

	General	Gas	Fuel Oils	Medical Care
FY 2013-14	2.40%	5.15%	3.07%	4.22%
FY 2014-15	2.54%	3.68%	4.78%	4.04%
FY 2015-16	2.53%	1.92%	4.08%	4.02%
FY 2016-17	2.40%	2.36%	3.81%	4.04%
FY 2017-18	2.32%	1.64%	3.80%	3.98%

Account No.	Account Title	FY 2013-14	FY 2014-15	FY 2015-16	FY 2016-17	FY 2017-18
532xxx	PURCHASED SERVICES					
5321xx	Contractual Services	\$ 666,344.00	\$ 540,594	\$ 540,594	\$ 540,594	\$ 540,594
5322xx	Utility/Energy Services					
5323xx	Repair Services					
5324xx	Maintenance Agreements					
5325xx	Rentals/Leases					
5327xx	Travel					
5328xx	Communications & Data Processing					
5329xx	Other Services					
533XXX	SUPPLIES					
5331xx	General Admin Supplies					
5332xx	Facility & Hardware Supplies					
5333xx	Vehicle/Equipment Operating Supplies					
5335xx	Clothing and Recreational Supplies					
5336xx	Drugs/Pharmaceutical Supplies					
5337xx	Research/Development & Educational Supplies					
5338xx	Purchases for Resale					
5339xx	Other Materials and Supplies					
534XXX	PROPERTY, PLANT AND EQUIPMENT					
5341xx	Land*					
5342xx	Buildings - Purchased*					
5343xx	Buildings - Constructed*					
5344xx	Other Structures and Improvement*					
5345xx	Equipment (Furniture, Office Equip.,					
5347xx	Intangible Assets					
535xxx	OTHER EXPENSES (please provide detail)					
Total		\$ 666,344	\$ 540,594	\$ 540,594	\$ 540,594	\$ 540,594

* Please attach detailed justification for capital purchases and any exceptional items such as large one-time purchases.

58,411	New Applications Filed in SFY 2011-2012
12,887	Recertifications Filed in SFY 2011-2012
71,298	Total
2,781	(3.9% of Work First Cases Referred for Drug Testing)
2970	.27% of potential cases with drug related convictions*
5751	Total subject to drug testing
\$ 94	Average Cost Per Drug Testing
\$ 540,594	Cost For Drug Testing

NC FAST Change Request Estimate Summary

Resource Requirements:	Hours	Cost
Functional Designers	125	\$15,625.00
Detail Designers	75	\$9,375.00
Build	156	\$19,500.00
Business – Cross	95	\$11,875.00
Testing Team	412	\$51,500.00
A/I Team	75	\$9,375.00
Curam Design Specialist	68	\$8,500.00
Totals:	1006	\$125,750.00

\$ 540,594	Total Potential Applicant/Recipient Costs
\$ 125,750	NC FAST Estimate
\$ 666,344.00	Total Potential Drug Testing Cost

Department of Corrections data shows .27% of NC general population with drug related criminal charges. Data received from DSS Performance Management , US Census Bureau and Department of Correction Research and Planning Automated System.

OPERATING COSTS

Note: When providing costs for future years, please factor in the following annual CPI increases (Estimates based on consumer price index projections provided by Moody's economy.com (January 2013)):

	General	Gas	Fuel Oils	Medical Care
FY 2013-14	2.40%	5.15%	3.07%	4.22%
FY 2014-15	2.54%	3.68%	4.78%	4.04%
FY 2015-16	2.53%	1.92%	4.08%	4.02%
FY 2016-17	2.40%	2.36%	3.81%	4.04%
FY 2017-18	2.32%	1.64%	3.80%	3.98%

Account No.	Account Title	FY 2013-14	FY 2014-15	FY 2015-16	FY 2016-17	FY 2017-18
532xxx	PURCHASED SERVICES					
5321xx	Contractual Services	\$ 988,400.00	\$ 862,650	\$ 862,650	\$ 862,650	\$ 862,650
5322xx	Utility/Energy Services					
5323xx	Repair Services					
5324xx	Maintenance Agreements					
5325xx	Rentals/Leases					
5327xx	Travel					
5328xx	Communications & Data Processing					
5329xx	Other Services					
533XXX	SUPPLIES					
5331xx	General Admin Supplies					
5332xx	Facility & Hardware Supplies					
5333xx	Vehicle/Equipment Operating Supplies					
5335xx	Clothing and Recreational Supplies					
5336xx	Drugs/Pharmaceutical Supplies					
5337xx	Research/Development & Educational Supplies					
5338xx	Purchases for Resale					
5339xx	Other Materials and Supplies					
534XXX	PROPERTY, PLANT AND EQUIPMENT					
5341xx	Land*					
5342xx	Buildings - Purchased*					
5343xx	Buildings - Constructed*					
5344xx	Other Structures and Improvement*					
5345xx	Equipment (Furniture, Office Equip., Intangible Assets)					
535xxx	OTHER EXPENSES (please provide detail)					
Total		\$ 988,400	\$ 862,650	\$ 862,650	\$ 862,650	\$ 862,650

* Please attach detailed justification for capital purchases and any exceptional items such as large one-time purchases.

NC FAST Change Request Estimate Summary

58,411	New Applications Filed in SFY 2011-2012
12,887	Recertifications Filed in SFY 2011-2012
71,298	Total
2,781	(3.9% of Work First Cases Referred for Drug Testing)
2970	.27% of potential cases with drug related convictions*
5751	Total subject to drug testing
\$ 150	Average Cost Per Drug Testing
\$ 862,650	Cost For Drug Testing

Resource Requirements:	Hours	Cost
Functional Designers	125	\$15,625.00
Detail Designers	75	\$9,375.00
Build	156	\$19,500.00
Business – Cross	95	\$11,875.00
Testing Team	412	\$51,500.00
A/I Team	75	\$9,375.00
Curam Design Specialist	68	\$8,500.00
Totals:	1006	\$125,750.00

\$ 862,650	Total Potential Applicant/Recipient Costs
\$ 125,750	NC FAST Estimate
\$ 988,400.00	Total Potential Drug Testing Cost

Department of Corrections data shows .27% of NC general population with drug related criminal charges. Data received from DSS Performance Management , US Census Bureau and Department of Correction Research and Planning Automated System.