



North Carolina Department of Health and Human Services
Division of Social Services

Pat McCrory
Governor

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

Wayne E. Black
Division Director

September 23, 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

Ms. Sarah Lang
Senate Principal Clerk
16 West Jones Street
Raleigh, NC 27601

Ms. Denise Weeks
House Principal Clerk
16 West Jones Street
Raleigh, NC 27601

President Pro Tempore Berger, Speaker Tillis, Ms. Lang, and Ms. Weeks:

Pursuant to Section 66(b) of Session Law 2014-115, the Department of Health and Human Services is required to report no later than the first of each calendar quarter until December 2015, on the implementation of section 4 of SL 2013-417. This reads as Drug screening and testing for Work First Program applicants and recipients. This report provides a detailed timeline for implementation of part II Section 4 of G.S. 108A-29.1.

As stewards of public funds, the Department of Health and Human Services is committed to promoting and ensuring the program integrity of the FNS and Work First programs, which is consistent with Session Law 2013-417 and the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104-193 (PRWORA).

Sincerely,

Wayne Black

cc:

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**Quarterly Legislative Report
Third Quarter 2014
Implementation of House Bill 392**

Session Law 2014-115 made changes to Session Law 2013-417 to require the Department of Health and Human Services to report no later than quarterly beginning April 1, 2014 and ending December 1, 2015 on the implementation of House Bill 392. HB 392, Part II, Section 4 (a) shall require 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 efforts to date by the Department.

North Carolina's Temporary Assistance for Needy Families (TANF) program, called Work First, and 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. Non parent caretakers can receive services and support which may prevent children from entering the foster care system unnecessarily. Families where grandparents and relatives are caring for their relative children and legal guardians may apply for assistance on the child's behalf, but are not included in the cash assistance payment. These cases are termed "Child Only" cases. Work First cash assistance is provided primarily for children. For State Fiscal Year (SFY) 2013-2014 there was a monthly average of 19,212 Work First cases, of those 69% were Child Only cases.

An estimated 6263 parents were included on the monthly Work First cash assistance payment for SFY 2013-2014. These parents are required to comply with the current Work First Substance Abuse Initiative. If an applicant or recipient fails or refuses to be screened they are ineligible for cash assistance. The Division of Mental Health, Developmental Disabilities and Substance Abuse Services (DMH/DD/SAS) provides an annual report on the number of Work First referrals (applicants and recipients) via the Work First Substance Abuse Initiative. During the reporting period, 1693 or 27% of the total parents included in the Work First cash assistance payment were referred to Local Management Entities/Managed Care Organizations for further assessment. Of the 27% referred, 329 of those individuals received substance abuse treatment.

Several challenges have delayed the Department's implementation of HB 392. There was a lack of definitive guidance from the Administration for Children and Families (ACF), the federal governing agency for TANF, regarding the use of TANF funds for drug testing. Changing opinions were received from ACF; their initial response implied that TANF funds may be used

for drug testing. This response was later changed indicating that the use of TANF funds were not allowable leaving the Department unsure of the funding source to support initial implementation and ongoing drug testing. This also created questions and delays concerning which substances to test for, identifying a laboratory testing agency and other administrative/procedural decisions that will affect final cost. In addition, the ongoing efforts to implement North Carolina Families Accessing Services through Technology (NC FAST) case management system diverted available staff resources from drug testing. Staff were deployed and reassigned to ensure the timely issuance of benefits to Food and Nutrition Services and Work First households.

Session Law 2014-100 provided a total of \$344,288 for implementation of Part II of Session Law 2013-417. Of these funds, \$125,750 will be used for enhancements to NC FAST. These enhancements are required to support the eligibility determination process and reporting requirements as defined by law. The remaining allocation of \$218,538 will be used for the costs related to the actual testing for the presence of the identified substances.

Despite these challenges, the Department moved forward with the Rule Making process and presented Administrative Rules to the Social Services Commission in June 2014. Once funding was approved and a specific amount identified the Department was able to refine the substances for testing based upon cost estimates. The Rules were revised to reflect the changed information and the Rule text was approved on August 13, 2014 by the Social Services Commission.

Proposed Temporary Rule, 10A NCAC 71W.0905 was published to the Office of Administrative Hearings (OAH) website on August 29, 2014. The public hearing was held on September 5, 2014 at the Division of Social Services. The public comment period ends on September 22, 2014. Once the public comment period ends the Temporary Rule will be considered for adoption by the Social Services Commission at its scheduled October 10, 2014 meeting. If adopted, the Temporary Rule will be forwarded to the Rules Review Commission (RRC). The Temporary Rule will be effective November 1, 2014, if approved by the RRC.

Attached is a projected timeline for implementation of HB 392, Part II, Section 4 (a). This timeline is subject to change based on comments and/or objections received during the public comment period and during the RRC review.

HB 392 Implementation Timeline

June 2014

Submitted Proposed Temporary Rule to Social Services Commission

July 2104

Senate Bill 144/Session Law 2014-100 provided funding to support HB 392

August 2014

Session Law 2014-115 extended Rules adoption date

Social Services Commission approved proposed text of Temporary Rule

Proposed Temporary Rule submitted to Office of Administrative Hearing

Proposed Temporary Rule published to OAH website

September 2014

Public Hearing Held

End of Public Comment Period

October 2014*

Adoption of Temporary Rule by Social Services Commission

Temporary Rule to Rules Review Commission

November 2014*

Temporary Rule Published

* These dates and activities are subject to change based on public comment/objections and RRC decision.