

**Department of Health and Human Services
Division of Social Services
Work First Program
Quarterly Legislative Report, Third Quarter 2015
Implementation of Session Law 2013-417 Part II**

Session Law 2013-417, Part II, Section 4(a) mandates that the Department of Health and Human Services (DHHS) 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. Session Law 2014-115 established the quarterly reporting requirement on the implementation of the 2013 law to begin no later than April 1, 2014 and ending December 1, 2015. DHHS provides the following report in accordance with SL 2013-417 as amended by SL 2014-115.

Background

North Carolina's Temporary Assistance for Needy Families (TANF) program, known as Work First, promotes a strengths-based, family-centered practice. 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 cash assistance and other services to help them become employed and move toward self-sufficiency. Biological parents, 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, other relatives and legal guardians are caring for children 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. For State Fiscal Year (SFY) 2013-2014, there was a monthly average of 20,532 Work First cases, an estimated 69% were Child Only cases.

For SFY 2013-2014, an estimated 6,263 parents were included on the monthly Work First cash assistance payment. Parents are required to comply with the current Work First Substance Abuse Initiative by submitting to a substance use screening. If an adult applicant or recipient fails or refuses to be screened for substance use, the household is 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 substance use referrals for Work First applicants and recipients. For the first quarter of SFY 2014-2015, 598 individuals were referred by the Work First program for further substance use assessment. Of that number, 78 parents or 13% received substance use treatment.

An early challenge to implementation of HB 392 was the 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. The Department was unsure of the funding source to support initial implementation and ongoing drug testing. HB 392 did not provide funding. Additional questions existed about which substances to test, and the impact of costs of the tests based on the number of substances tested. Lack of identified drug testing funds also contributed to a delay in the schedule for full implementation.

In March of 2014, The Department completed an Expansion Request for funds to support implementation and the ongoing costs. In July 2014, Session Law 2014-100 (Senate Bill 144)

provided a total of \$344,288 for implementation. Of the funds, \$125,750, was designated for system enhancements to support the eligibility determination process and reporting requirements. The remaining allocation of \$218,538 funded costs related to the administration of the drug test.

The Department presented proposed Temporary Administrative Rules to the Social Services Commission (SSC) in June 2014. The Department was able to refine the list of substances to test for based on estimated cost only when funding was appropriated by the General Assembly. The text for the proposed Temporary Rule was revised to reflect the new information, and the proposed Temporary 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 Social Services Commission adopted the Rule at its October 10, 2014 meeting. The Rules Review Commission (RRC) adopted the Temporary Rule on October 16, 2014. The Temporary Rule was published to the North Carolina Register with an effective date of November 1, 2014.

Comments were received from Legal Services of the Southern Piedmont and the American Civil Liberties Union during the public comment period for the Temporary Rule. In addition, members of the Rules Review Commission cited areas of concern. In response to the comments, the Department met with DHHS legal staff, Department of Justice staff and Counsel to the Rules Review Commission for further clarification and guidance in the development of the text for the proposed Permanent Rules. On January 15, 2015, the proposed text for the Permanent Rules was approved by the Social Services Commission. The Fiscal Note and proposed Permanent Rules were reviewed by the Office of State Budget and Management (OSBM). OSBM approved and posted the Fiscal Note.

Quarter II Implementation Activity

The Drug Testing Rules, 10A NCAC 73A .0101 to 10A NCAC 73A .0108, were posted on the Office of Administrative Hearings (OAH) website. A public hearing was held on April 15, 2015 and the 60-day public comment ended on April 17, 2015. Comments were received from the American Civil Liberties Union (ACLU) and Legal Services of the Southern Piedmont.

The Work First Program consulted with legal counsel from the Attorney General's Office to review the public comments and recommended changes prior to submission to the Social Services Commission for final adoption. Proposed Permanent Rules were adopted by the Social Services Commission on April 20, 2015. The Rules were filed with the OAH; subsequent revisions were made to the rules based on comments received from the OAH Rules Review Commission legal counsel, ACLU and Legal Services of the Southern Piedmont. Proposed Permanent Rules were presented to the Rules Review Commission on May 21, 2015. The RRC approved permanent Drug Testing rules 10A NCAC 73A .0101 to 10A NCAC 73A .0106 with an effective date of June 1, 2015.

OAH Rules Review Commission legal counsel recommended objection to Rules 10A NCAC 73A .0107 and 10A NCAC 73A .0108. The RRC objected and two individual public comments were received objecting to the rules, therefore the remaining Rules were revised, re-submitted and received final approval at the June 16, 2015 meeting of the Commission. Rules 10A NCAC 73A .0107 and 10A NCAC 73A .0108 have an effective date of July 1, 2015. Subsequent to the

two individual comments, the DSS chose to post the Permanent Rules in the Spanish language on the DHHS/DSS website under Social Services Commission, Public Notices.

Written program policies to support implementation were completed and made available to county agencies on June 16, 2015. NC DSS has maintained open communication with County DSS Directors, informing them of implementation progress via conference calls, regional meetings and written correspondence. Notices, in English and Spanish, were mailed to Work First Program recipients for the months of May and June 2015 to inform them of the upcoming changes to eligibility requirements. The scope of work for the Memorandum of Agreement (MOA) between NC DSS and DMH/DD/SAS which is necessary to update the roles and responsibilities of each agency regarding implementation if the required law is complete. County DSS agencies will receive notification of the MOA along with an MOA template to assist them with developing agreements at the local level.

The North Carolina Divisions of Social Services and Mental Health, Developmental Disabilities, Substance Abuse Services and NC FAST partnered to develop a training webinar for county DSS agencies. County DSS staff, Local Management Entities and Managed Care Organizations (LME-MCO), and other stakeholders were given the opportunity to participate in one or all of the three training sessions offered during the week of June 15, 2015. The webinar was recorded and will be made available for counties to utilize as a resource as they implement the new Work First Program eligibility requirement. In addition, a Question and Answer document will be posted on the NC FAST Learning Gateway for county DSS staff. A "Train the Trainer" webinar session was provided to departmental staff that provide direct consultation to county DSS agencies. Also NC DSS Work First program staff participated in the DMH/DD/SAS sponsored training regarding the new requirements, roles, and responsibilities for the Qualified Professional in Substance Abuse.

System enhancements to the NC FAST automated case management system are on target for implementation. The Department is tightly monitoring progress and in constant contact with NC FAST business leads and NC DSS Work First program consultants to ensure implementation success.

A Request for Proposals (RFP) to provide drug testing services to the 100 county DSS agencies was published on the Interactive Purchasing System on February 27, 2015 with submission deadline of March 31, 2015. The RFP Evaluation Committee's vendor justification and recommendation was submitted to the DHHS Office of Procurement and Contract Services on May 28, 2015. On June 12, 2015, the notice of award was signed by the NC DSS Director. During implementation discussions, the Vendor identified several elements in their strategic plan that required vetting through their internal processes prior to implementation. The Vendor will require additional time to establish referral and reporting policies and to provide training to State and County Department of Social Services staff. In order to accommodate their requirements the target date for drug testing to begin has been changed to August 1, 2015. The Department expects to meet the August 1st target date and will notify Legislators if additional time is needed.

Quarter III Implementation Activity

As of August 1, 2015, applicant and recipient parents are required to comply with the Work First Substance Use Initiative by submitting to substance use screening and testing. If an adult applicant or recipient refuses to comply with substance use screening, the applicant or recipient is ineligible for cash assistance. If an applicant or recipient is screened for substance use and meets the criteria for reasonable suspicion, the applicant or recipient is referred for substance use testing. If the applicant or recipient does not comply with substance use testing, the

applicant or recipient is ineligible for cash assistance. Further, if an applicant or recipient completes the substance use testing and has a positive test result, the applicant or recipient is ineligible for cash assistance. The remaining household members, if they meet program eligibility requirements, are eligible to receive Work First Program assistance. A protective payee is assigned to receive the cash assistance payment and to ensure it is used in the best way to meet the needs of the eligible household members.

NC DSS staff continued to communicate with the drug testing vendor, Fortes Laboratories of Wilsonville, Oregon regarding procedural training and other implementation readiness activities. On July 16, 2015 Fortes Laboratories provided State Work First program staff with an overview of the Fortes Laboratories data management system, eFortes. This system provides a secure site for the management of substance use referrals and of test results.

NC DSS staff provided user login and secure passwords to County DSS IT Security Officers. The Security Officers in the 100 county agencies received specialized training via webinar from Fortes Laboratories regarding the eFortes system. County Security officers were tasked with providing the appropriate user access to designated county Work First Program staff prior to implementation. An additional four training sessions were provided to county Work First Program staff on system access, completing referrals for testing and accessing test results in the eFortes system. All 100 counties participated in the live webinar trainings.

On August 3, 2015 County Departments of Social Services operationalized Work First Program Substance Use "Drug Testing". A centralized implementation "command center" was staffed by the DHHS agencies, NCDSS/Work First, NCFASST, and the Operational Support Team. The staff provided technical assistance and policy guidance to the 100 County DSS agencies August 3-5, 2015.

There is ongoing communications with Fortes Laboratories to address system functionality and contractual requirements. Due to federal laws related to the confidentiality of substance use test results, NCDSS staff will conduct system audits to ensure appropriate user access.

Ongoing support is being provided to county agency staff regarding policy questions and eFortes system functionality by NCDSS staff. In addition, NCDSS and DMH/DD/SAS staff are in communication to facilitate the coordination between the county dss and LME-MCO agencies.

The substance use testing initiative is in the early stages of implementation. NC FAST is in the process of developing statistical reports to determine its impact on the program and the population served. Preliminary data received for August 2015, indicates that 18 individuals met the criteria of reasonable suspicion and were referred for substance use testing. There were not any positive drug test results reported by Fortes Laboratories as of August 31, 2015. It is important to note that the application processing period for Work First Program assistance is 45 days. As a result, data regarding eligibility determination outcomes (approvals, denials, and disqualifications) based on substance use screening and testing is not available for inclusion in this report. The December 1, 2015 legislative report will provide data based on a three (3) month observation and will provide detailed for substance use screening and testing.