



REPORT TO THE NORTH CAROLINA STUDY COMMISSION ON AGING

**North Carolina Department of Health and Human Services
Division of Health Service Regulation and Division of Aging and Adult Services**

December 31, 2010

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North Carolina Department of Health and Human Services
Division of Health Service Regulation and Division of Aging and Adult Services

Overview

House Bill 945, Session Law 2009-574, requires the Department of Health and Human Services “to study the feasibility of requiring long-term care facilities to require applicants for employment and certain employees to submit to drug testing for controlled substances.” The following report outlines the Department’s findings and recommendations regarding the matter.

Response to Legislative Request

The General Assembly enacted as part of Senate Bill 945, S.L. 2009-574 (Attachment A) the following provision:

SECTION 15.1. The Department of Health and Human Services, Division of Health Service Regulation and the Division of Aging and Adult Services, may conduct a study on the feasibility of requiring long-term care facilities to require drug tests on applicants for employment and on employees. The Department may solicit input from advocates, long-term care facilities, and other interested stakeholders while conducting the study.

In response to the above directive, on September 28, 2010 the Department convened a stakeholder workgroup consisting of Division of Health Service Regulation and Division of Aging and Adult Services staff and long-term care stakeholders including representatives from the North Carolina Health Care Facilities Association, the North Carolina Association of Long Term Care Facilities, the North Carolina Association of Non-Profit Homes for the Aging and the North Carolina Assisted Living Association. The purpose of the workgroup was to discuss how to meet the intent of the study including survey questions to ask long-term care providers regarding their current practices of drug testing, if applicable.

Background

Long-term care facilities in North Carolina are licensed pursuant to two separate statutes: General Statute (G.S.) § 131E Article 6, Part 1, the Nursing Home Licensure Act; and G.S. § 131D, Article 1, Part 1, Adult Care Licensing. For purposes of this report, long-term care facilities will be referenced by the abbreviation “LTCF.” When it is necessary to differentiate between nursing homes and adult care homes, nursing homes will be referenced by the abbreviation “NH” and adult care homes by the abbreviation “ACH.”

In addition to statutory requirements found in G.S. § 131E and G.S. § 131D, NH and ACH facilities must also comply with the following:

- NH - North Carolina Administrative Code (NCAC) found at Title 10A NCAC Chapter 13, Subchapter D;
- NH – if certified for Medicare/Medicaid, Section §1819 and § 1919 of the Social Security Act and regulations found at Title 42 Code of Federal Regulations, Part § 483; and
- ACH – North Carolina Administrative Code found at Title 10A NCAC Chapter 13, Subchapter F (for ACH ≥ 7 beds) and Title 10A NCAC Chapter 13, Subchapter G (for ACH with 2 – 6 beds, also called family care homes).

It should be noted that currently none of the aforementioned statutes or regulations, State or Federal, require any LTCF to conduct drug testing on its employees, either at time of hiring or for employees already working at the facility.

Stakeholder Workgroup Meeting

During the stakeholder workgroup meeting held on September 28, 2010, a number of issues were discussed and considered related to the possibility of a mandatory requirement that LTCFs conduct drug testing. These issues included:

- What is the current practice of drug testing in LTCFs in North Carolina?
- For facilities that currently do not conduct drug testing, what would be the cost incurred if legislation was passed and signed into law requiring such testing?
- Given that current reimbursement rates for LTCFs have been flat and in many cases, reduced due to budgetary constraints in the past few years, what effect would placing new requirements concerning drug testing have on LTCFs?

As a result of the workgroup meeting, it was determined a survey needed to be conducted of currently licensed LTCFs to determine the current practice of drug testing and related costs. During the meeting, it was noted a survey of employee drug testing practices in NHs had been conducted by the Division of Health Service Regulation for the North Carolina Medical Care Commission in 2006. As a result, the questions from the 2006 survey were used as a starting point to develop questions for a new survey, which would include NHs as well as ACHs. Once the questions were finalized, the survey was sent out to NHs and ACHs via a letter dated October 11, 2010 (Attachments B and C, respectively). A copy of the actual survey questions can be found in Attachments C and E.

In addition, a survey was also done of other states with regards to whether they require NHs or ACHs (commonly known as assisted living facilities in other states) to conduct drug testing of prospective or current employees. A copy of these survey questions can be found in Attachment F. It is important to note that of the twenty (21) states that responded to the survey, only one of them (Delaware) required mandatory drug testing for NHs and assisted living facilities. The states that responded to the survey include: Arizona, Arkansas, California, Delaware, Florida, Idaho, Illinois, Indiana, Iowa, Louisiana, Maryland, Missouri, Montana, Nevada, New Jersey, Oklahoma, Tennessee, Texas, Vermont, West Virginia and Wisconsin.

Results of Drug Testing Surveys

Nursing Homes – The results of the nursing home drug testing survey are displayed below.

- Of the 435 nursing homes receiving the survey, 141 participated in the survey for a response rate of 32.4% .
- The total number of employees for the 141 nursing homes was 22,357 with an average of 160 employees/facility. If extrapolated to all 435 nursing facilities in the state, it means there are approximately 68,973 employees working in nursing homes across North Carolina.
- 89% of respondents reported they performed drug testing on employees
 - 83% of the drug testing was performed on all employees;
 - 17% of the drug testing was performed on licensed staff (i.e. administrators, nurses, social workers, dietitians, etc.) or unlicensed staff (i.e. nurse aides, kitchen staff, housekeepers, etc.).
- Regarding when drug testing was performed:
 - 9% reported drug testing was performed only upon hiring;
 - 37% reported drug testing was performed only upon hiring and randomly thereafter;
 - 45% reported drug testing was performed only upon hiring and when suspicions warranted such testing;
 - 6% reported drug testing was performed only when suspicions warranted such testing; and
 - 3% reported drug testing was performed randomly and when suspicions warranted such testing.
- Regarding where drug testing was performed:
 - 69% reported drug testing was performed on-site at the facility; and
 - 41% reported drug testing was performed at a location different from the facility (69% + 41% = 110%, which means approximately 10% of facilities perform drug testing both on-site and at locations different from the facility).
- Regarding the average cost per employee for drug testing and additional testing:
 - 81% reported the cost was between \$15 - \$30/employee with the largest percentage (30%) reporting the cost was \$15 or less;
 - 84% reported that additional drug testing (beyond the initial testing) was not performed; and
 - For those that reported additional testing was performed (16% of total respondents), the largest percentage (33%) reported the cost was \$30 or less.

Summary of results for NHs – The group felt the results of the NH survey can be summarized into a few points:

1. Of those responding to the survey, the vast majority (89%) of NHs in North Carolina perform drug testing on employees with the majority of testing being performed at the time of hiring and randomly thereafter or if suspicions warrant;
2. The majority of the testing is performed on-site at the facility; and
3. Most tests cost in the range of \$15 - \$30/employee with the median cost being approximately \$22.50/test.

Adult Care and Family Care Homes - The results of the adult care and family care home drug testing survey are displayed below.

- Of the 1,254 ACHs receiving the survey, 126 participated for a response rate of 10.04%.
- The total number of employees for the 126 ACHs was:
 - ACH (family care homes 2 – 6 beds) – 112 employees for 30 facilities with an average of 3.7 employees/facility. If extrapolated to all 627 family care homes in the state, it means there are approximately 2,341 employees working in these homes across North Carolina.
 - ACH (>7 beds and up) – 4,864 employees for 96 facilities with an average of 50.7 employees/facility. If extrapolated to all 627 ACHs in the state with ≥ 7 beds and up, it means there are approximately 31,768 employees working in these homes across North Carolina.
 - For all ACHs in the state (family care 2 – 6 beds + ACH with ≥ 7 beds and up), there are approximately 34,109 employees working in these facilities.
- 54% of respondents reported they performed drug testing on employees
 - 78% of the drug testing was performed on all employees;
 - 12% of the drug testing was performed on licensed staff (administrators/supervisors/licensed staff such as nurses, social workers, dietitians, etc.) or other staff (i.e. personal care aides, medication aides, kitchen staff, housekeepers, etc.).
- Regarding when drug testing was performed:
 - 6% reported drug testing was performed only upon hiring;
 - 30% reported drug testing was performed only upon hiring and randomly thereafter;
 - 30% reported drug testing was performed only upon hiring and when suspicions warranted such testing;
 - 8% reported drug testing was performed only when suspicions warranted such testing; and
 - 26% reported drug testing was performed randomly and when suspicions warranted such testing.
- Regarding where drug testing was performed:
 - 23% reported drug testing was performed on-site at the facility; and
 - 77% reported drug testing was performed at a location different from the facility.
- Regarding the average cost per employee for drug testing and additional testing:
 - 55% reported the cost was between \$15 - \$30/employee with the largest percentage (20%) reporting the cost was \$16 - \$20;
 - 91% reported that additional drug testing (beyond the initial testing) was not performed; and
 - For those that reported additional testing was performed (9% of total respondents), the largest percentage (50%) reported the cost was \$31 - \$40.

Summary of results for ACHs –

1. Of those responding to the survey, the majority (54%) of ACHs in North Carolina perform drug testing on employees with the majority of testing being performed at the time of hiring and randomly thereafter or if suspicions warrant.
2. The majority of the testing is performed at a location different from the facility.
3. Most tests cost in the range of \$15 - \$30/employee with the median cost being approximately \$22.50/test.

Findings and Recommendation

From the information gathered in the study from participating NH and ACH long term care providers, it is apparent that many providers already conduct some type of drug testing of prospective and current employees. To provide quality care and also discourage staff from diverting prescription drugs from facilities, it is imperative that staff not be impaired or otherwise under the influence of illegal or prescription drugs. However, the issue of whether or not the state should require drug testing on applicants for employment and on employees requires further consideration. Based on annual data collected by the Department through the NH and ACH license renewal process, each year the turnover rates of non-licensed direct care employees, staff that provide most of the hands-on care, in NHs and ACHs is typically >100%/year. Having a law in place that requires drug testing on all new employees would place an enormous burden on NH and ACH providers, particularly those that receive reimbursement through public funds such as Medicaid and State/County Special Assistance. These reimbursement programs have seen actual reimbursement rates reduced in the past few years as a result of decreased state revenues and resulting budget cuts. Long term care providers are ultimately responsible for the care provided to residents and most providers take this responsibility very seriously, which includes having a trained and competent work force. As such, we believe providers deserve the autonomy to determine when and where drug testing of prospective and current employees should take place. Given that only one of the states responding to our state survey have seen the need to require facilities perform drug testing on employees, we believe it is evident that most providers have systems in place to make informed decisions when hiring new employees and addressing employees who appear to be impaired by drugs or may be diverting drugs for personal use. In addition, with most NHs subject to both state licensure and federal Medicare regulations with survey frequencies of every 9 – 15 months, which does not include complaint investigations and follow-up visits, and ACHs subject to state licensure rules and annual surveys by the Division of Health Service Regulation as well as local monitoring visits by county Departments of Social Services', the regulatory burden of long term care providers in North Carolina is among the highest regulated services in the state.

Conclusion

The group recommends that a law requiring long term care facilities to perform drug testing of prospective and current employees is not currently needed. Given the fact that provider reimbursement has been reduced and that it is unlikely an enhanced reimbursement rate be approved, it would not be prudent to require providers to pay for such a mandate. In addition, as demonstrated in the above surveys, many providers already have systems in place to address the issue of drug testing employees.

ATTACHMENT A

GENERAL ASSEMBLY OF NORTH CAROLINA SESSION 2009

SESSION LAW 2009-574 HOUSE BILL 945

AN ACT TO PROVIDE FOR STUDIES BY THE COMMISSION, STATUTORY
OVERSIGHT COMMITTEES AND COMMISSIONS, AND OTHER AGENCIES, COMMITTEES,
AND COMMISSIONS.

The General Assembly of North Carolina enacts:

PART I. TITLE

SECTION 1. This act shall be known as "The Studies Act of 2009."

**....PART XV. DEPARTMENT OF HEALTH AND HUMAN SERVICES TO STUDY THE FEASIBILITY
OF REQUIRING LONG-TERM CARE FACILITIES TO REQUIRE APPLICANTS FOR
EMPLOYMENT AND CERTAIN EMPLOYEES TO SUBMIT TO DRUG TESTING FOR
CONTROLLED SUBSTANCES (H.B. 1239 – Sager, Cleveland, Stevens, Randleman)**

SECTION 15.1. The Department of Health and Human Services, Division of
Health Service Regulation and the Division of Aging and Adult Services, may conduct a study on the feasibility of
requiring long-term care facilities to require drug tests on applicants for employment and on employees. The
Department may solicit input from advocates, long-term care facilities, and other interested stakeholders while
conducting the study.

SECTION 15.2. The Department may report findings and recommendations on the feasibility of
conducting drug tests for long-term care facility employment applicants and employees to the North Carolina
Study Commission on Aging on or before October 1, 2010.

....PART LIIL. BILL AND RESOLUTION REFERENCES

SECTION 53.1. The listing of the original bill or resolution in this act is for
reference purposes only and may not be deemed to have incorporated by reference any of the substantive
provisions contained in the original bill or resolution.

PART LIV. EFFECTIVE DATE AND APPLICABILITY

SECTION 54.1. Except as otherwise specifically provided, this act is effective
when it becomes law. If a study is authorized both in this act and in the Current Operations and Capital
Improvements Appropriations Act of 2009, the study shall be implemented in accordance with the Current
Operations and Capital Improvements Appropriations Act of 2009 as ratified.

In the General Assembly read three times and ratified this the 11th day of August, 2009.

s/ Walter H. Dalton
President of the Senate

s/ Joe Hackney
Speaker of the House of Representatives

s/ Beverly E. Perdue
Governor

Approved 3:29 p.m. this 10th day of September, 2009

ATTACHMENT B



North Carolina Department of Health and Human Services Division of Health Service Regulation

2701 Mail Service Center • Raleigh, North Carolina 27699-2701

<http://www.ncdhhs.gov/dhstr/>

Drexdal Pratt, Director

Beverly Eaves Perdue, Governor
Lanier M. Cansler, Secretary

Jeff Horton, Chief Operating Officer
Phone: 919-855-3757
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October 11, 2010

MEMORANDUM

To: Nursing Home Administrators

From: Jeff Horton

Subject: Study to determine the feasibility of requiring long-term care facilities to require drug testing on applicants for employment and on employees

In the 2009 Legislative Session, as the result of Section 15.1 of House Bill 945, the North Carolina General Assembly required the N.C. Department of Health and Human Services to *"conduct a study on the feasibility of requiring long-term care facilities to require drug tests on applicants for employment and on employees."* In addition, while conducting the study, the Bill requires the Department *"to solicit input from advocates, long-term care facilities, and other interested stakeholders."*

As a result, we are conducting a survey of long-term care facilities in North Carolina to determine whether or not facilities are currently conducting drug tests of employees and if so, to what extent. In order to obtain information needed for the study, we need your help. Below is a web site that contains a survey we would like you to complete. The information you provide is very important to us and will assist in completing the study.

Please note: In order for us to complete the study timely, we need your participation as soon as possible and no later than Friday, October 22, 2010. After that date, the web site link will no longer be valid.

The survey is confidential and the Division of Health Service Regulation or the North Carolina Department of Health and Human Services will not know your identity

Thank you very much for your participation and if you have questions, please do not hesitate to contact our office.

Drug testing survey web site: <http://prod.ncsurveymax.com/TakeSurvey.aspx?SurveyID=86KIn84>

ATTACHMENT C

Survey Questions for Nursing Homes

1. What is the total number of employees working in your facility?
2. Does your facility conduct drug testing of its employees? ____yes ____no
If "yes," please answer questions 2 - 7.
3. Is drug testing (such as urine tests) performed for all employees? ____yes ____no
4. Which employees does your drug testing policy apply?
 - a. Licensed staff (administrators, nurses, social workers, dietitians, etc.);
 - b. Unlicensed staff (nurse aides, kitchen staff, housekeepers, etc.)
5. When is drug testing performed?
 - a. Only upon hiring?
 - b. Only upon hiring and randomly thereafter?
 - c. Only upon hiring and if suspicions warrant?
 - d. Not upon hiring or randomly but only when suspicions warrant?
 - e. Not upon hiring but randomly and when suspicions warrant?
6. Where is drug testing performed?
 - a. On-site at the facility
 - b. Off-site at a location different from the facility
7. When drug testing is performed, what is the average cost per employee for the screening?
 - a. \$15 or less
 - b. \$16 - \$20
 - c. \$21 - \$25
 - d. \$26 - \$30
 - e. \$31 - \$35
 - f. \$36 - \$40
 - g. \$41 - \$45
 - h. \$46 - \$50
 - i. \$50 or more
8. Does your facility conduct additional drug testing (such as blood tests) beyond the initial testing? ____yes ____no
9. If "yes," what is the average costs of the additional testing?
 - a. \$30 or less
 - b. \$31 - \$40
 - c. \$41 - \$50
 - d. \$51 - \$60
 - e. \$61 - \$70
 - f. \$71 - \$80
 - g. \$81 - \$90
 - h. \$91 - \$100
 - i. \$100 or more

ATTACHMENT D



North Carolina Department of Health and Human Services Division of Health Service Regulation

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<http://www.ncdhhs.gov/dhsr/>

Drexdal Pratt, Director

Beverly Eaves Perdue, Governor
Lanier M. Cansler, Secretary

Jeff Horton, Chief Operating Officer
Phone: 919-855-3757
Fax: 919-733-2757

October 11, 2010

MEMORANDUM

To: Adult Care and Family Care Homes

From: Jeff Horton

Subject: Study to determine the feasibility of requiring long-term care facilities to require drug testing on applicants for employment and on employees

In the 2009 Legislative Session, as the result of Section 15.1 of House Bill 945, the North Carolina General Assembly required the N.C. Department of Health and Human Services to *"conduct a study on the feasibility of requiring long-term care facilities to require drug tests on applicants for employment and on employees."* In addition, while conducting the study, the Bill requires the Department *"to solicit input from advocates, long-term care facilities, and other interested stakeholders."*

As a result, we are conducting a survey of long-term care facilities in North Carolina to determine whether or not facilities are currently conducting drug tests of employees and if so, to what extent. In order to obtain information needed for the study, we need your help. Below is a web site that contains a survey we would like you to complete. The information you provide is very important to us and will assist in completing the study.

Please note: In order for us to complete the study timely, we need your participation as soon as possible and no later than Friday, October 22, 2010. After that date, the web site link will no longer be valid.

The survey is confidential and the Division of Health Service Regulation or the North Carolina Department of Health and Human Services will not know your identity

Thank you very much for your participation and if you have questions, please do not hesitate to contact our office.

Drug testing survey web site: <http://prod.ncsurveymax.com/TakeSurvey.aspx?SurveyID=86KIm84>

ATTACHMENT E

Survey Questions for Adult Care Homes and Family Care Homes

1. What is the total number of employees working in your facility?
2. Does your facility conduct drug testing of its employees? ____yes ____no
3. Is drug testing (such as urine tests) performed for all employees? ____yes ____no
4. Which employees does your drug testing policy apply (check all that apply)?
 - a. Administrators/Supervisors/Licensed staff (nurses, social workers, dietitians, etc.)
 - b. Personal Care aides, Medication aides, Kitchen staff, Housekeepers, etc.
5. When is drug testing performed?
 - a. Only upon hiring?
 - b. Only upon hiring and randomly thereafter?
 - c. Only upon hiring and if suspicions warrant?
 - d. Not upon hiring or randomly but only when suspicions warrant?
 - e. Not upon hiring but randomly and if when suspicions warrant?
6. Where is drug testing performed?
 - a. On-site at the facility
 - b. Off-site at a location different from the facility
7. What is the average cost per employee for the testing?
 - a. \$15 or less
 - b. \$16 - \$20
 - c. \$21 - \$25
 - d. \$26 - \$30
 - e. \$31 - \$35
 - f. \$36 - \$40
 - g. \$41 - \$45
 - h. \$46 - \$50
 - i. \$50 or more
8. Does your facility conduct additional drug testing (such as blood tests) beyond the initial testing? ____yes ____no
9. If "yes," what is the average costs of the additional testing?
 - a. \$30 or less
 - b. \$31 - \$40
 - c. \$41 - \$50
 - d. \$51 - \$60
 - e. \$61 - \$70
 - f. \$71 - \$80
 - g. \$81 - \$90
 - h. \$91 - \$100
 - i. \$100 or more

ATTACHMENT F

Survey Questions Emailed to Other States Regarding Requirements for Drug Testing in Long Term Care Facilities

1. Does your state have laws or rules in place that require nursing homes to perform drug screening on prospective or current employees for the presence of banned substances, i.e. marijuana, cocaine, etc. - Yes or No
2. Does your state have laws or rules in place that require assisted living facilities to perform drug screening on prospective or current employees for the presence of banned substances, i.e. marijuana, cocaine, etc. - Yes or No
3. If yes to either 1 or 2, please provide a web link (or paste information directly into the email) that provides information on any required drug screening on prospective or current employees for nursing homes or assisted living facilities.