February 15, 2013

HOUSE BILL No. 1483

DIGEST OF HB 1483 (Updated February 13, 2013 1:58 pm - DI 107)

Citations Affected: IC 12-7; IC 12-14.

Synopsis: Drug testing of recipients of assistance. Requires the office of the secretary of family and social services to administer a drug testing program for individuals who are receiving TANF assistance or receiving TANF assistance on behalf of a child. Establishes requirements for the drug testing program and ineligibility penalties.

Effective: July 1, 2013.

McMillin, VanNatter, Kubacki

January 22, 2013, read first time and referred to Committee on Family, Children and Human Affairs.
February 14, 2013, amended, reported — Do Pass. Referred to Committee on Ways and Means pursuant to Rule 127.

C o p y

February 15, 2013

First Regular Session 118th General Assembly (2013)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type.~~

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~*this style type*~~ reconciles conflicts between statutes enacted by the 2012 Regular Session of the General Assembly.

C o p y

HOUSE BILL No. 1483

A BILL FOR AN ACT to amend the Indiana Code concerning human services.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 12-7-2-43.3 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: **Sec. 43.3. "Controlled substance", for purposes of IC 12-14-5.4 and this chapter, has the meaning set forth in IC 35-48-1-9.**

SECTION 2. IC 12-7-2-189.9 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: **Sec. 189.9. "TANF assistance", for purposes of IC 12-14-5.4, means assistance under the federal Temporary Assistance for Needy Families program under 42 U.S.C. 601 et seq.**

SECTION 3. IC 12-7-2-190.2 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: **Sec. 190.2. "Tests negative" or "testing negative", for purposes of IC 12-14-5.4, means that an individual:**

(1) tests negative for the use of a controlled substance in the

individual's body; or

(2) tests positive for the use of a controlled substance in the individual's body but has:

(A) a valid prescription; or

(B) an order of a practitioner acting in the course of the practitioner's professional practice;

for the controlled substance.

SECTION 4. IC 12-7-2-190.3 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: **Sec. 190.3. "Tests positive" or "testing positive", for purposes of IC 12-14-5.4, means an individual:**

(1) tests positive for the presence of a controlled substance in the individual's body; and

(2) does not possess:

(A) a valid prescription; or

(B) an order of a practitioner acting in the course of the practitioner's professional practice;

for the controlled substance.

SECTION 5. IC 12-14-5.4 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]:

Chapter 5.4. Drug Testing Program

Sec. 1. This chapter applies to an individual who:

(1) is eligible to receive TANF assistance or who receives TANF assistance on behalf of a child; and

(2) is at least eighteen (18) years of age.

Sec. 2. (a) The office of the secretary shall develop and establish a program in accordance with this chapter to test for the illegal use of a controlled substance by an individual described in section 1 of this chapter.

(b) The office of the secretary shall implement a program established in accordance with this chapter not later than July 1, 2014.

Sec. 3. An individual described in section 1 of this chapter shall take a substance abuse subtle screening inventory test administered in written or electronic form by a county office.

Sec. 4. A county office shall provide the following information in writing to an individual described in section 1 of this chapter at the time the individual applies for TANF assistance:

(1) The individual is required to take a written or electronic substance abuse subtle screening inventory test.

(2) The individual may be subject to random drug testing

C o p y

based on the results of the test described in subdivision (1).

(3) The individual may be subject to drug testing if the county office believes, based on reasonable suspicion as set forth in section 5 of this chapter, that the individual is engaged in the illegal use of a controlled substance.

(4) If the individual tests positive on a drug test administered under this chapter, the individual or the child on whose behalf the individual receives TANF assistance may be ineligible for TANF assistance.

(5) If the individual tests positive on a drug test administered under this chapter, the amount of the cost of the drug test will be withheld from any future TANF assistance the individual receives if the individual continues to receive TANF assistance.

(6) If the individual tests positive on a drug test administered under this chapter, the amount of the cost of any subsequent drug tests the individual is required to undergo will be withheld from the TANF assistance the individual receives, if the individual continues to receive TANF assistance, regardless of whether the individual tests positive or tests negative on the drug test.

Sec. 5. (a) A county office is considered to have reasonable suspicion to believe that an individual is engaged in the illegal use of a controlled substance if one (1) or more of the following apply:

(1) The individual has been charged with an offense under IC 35-48 (controlled substances).

(2) The results of the substance abuse subtle screening inventory test indicate that the individual is a risk for the illegal use of a controlled substance.

(3) The individual has previously failed a drug test administered under this chapter.

(b) If a county office has knowledge that an individual has been formally charged with an offense described in subsection (a)(1), the county office shall administer a drug test to the individual.

(c) If a county office has reasonable suspicion to believe from the results of a substance abuse subtle screening inventory test that an individual is engaged in the illegal use of a controlled substance, the individual shall be placed in a pool of individuals who are subject to drug testing described in section 6 of this chapter.

(d) If a county office has reasonable suspicion to believe that an individual is engaged in the illegal use of a controlled substance as the result of failing a drug test administered under this chapter, the

C o p y

individual shall be placed in a pool of individuals who are subject to random drug testing as described in section 7 of this chapter.

Sec. 6. The office of the secretary shall administer a drug test to at least fifty percent (50%) of the pool of individuals described in section 5(c) of this chapter. An individual may not be tested more than once under this section.

Sec. 7. The office of the secretary shall administer random drug tests to fifty percent (50%) of the pool of individuals described in section 5(d) of this chapter each month.

Sec. 8. A county office shall provide a list of drug abuse treatment programs to any individual who tests positive under this chapter.

Sec. 9. (a) An individual who tests positive under this chapter and provides evidence that the individual is participating in a drug abuse treatment program shall continue to receive TANF assistance. However, the office of the secretary shall administer a drug test to the individual regularly at intervals of at least twenty (20) days and not more than thirty (30) days until the individual tests negative in two (2) consecutive drug tests.

(b) If an individual does not test negative in two (2) consecutive drug tests as described in subsection (a) not later than four (4) months after the date the office of the secretary begins testing the individual regularly under subsection (a):

(1) the individual; or

(2) any child on whose behalf the individual receives TANF assistance;

is ineligible to receive TANF assistance for three (3) months from the date the office of the secretary determines that the individual is unable to test negative on two (2) consecutive drug tests as described in subsection (a).

(c) If an individual:

(1) tests positive under this chapter; and

(2) fails to provide, not later than thirty (30) days after the date the individual tests positive, evidence that the individual is participating in a drug abuse treatment program;

the individual or any child on whose behalf the individual receives TANF assistance is ineligible to receive TANF assistance for three (3) months after the thirty (30) day period described in subdivision (2).

(d) An individual who is ineligible under subsection (b) or (c) may reapply for TANF assistance after the applicable three (3) month ineligibility period. Upon reapplying, the individual must

C o p y

test negative on a drug test before the individual may receive TANF assistance.

(e) If an individual described in subsection (d) tests positive on the drug test administered for the TANF reapplication process, the following apply:

(1) The individual is permanently ineligible to receive TANF assistance for the individual.

(2) A child on whose behalf the individual receives TANF assistance is ineligible for TANF assistance for as long as the child resides with the individual.

Sec. 10. (a) An individual who:

(1) reapplies for TANF assistance under section 9(d) of this chapter; and

(2) is eligible to receive TANF assistance;

is subject to random drug testing as described in subsection (b) for as long as the individual receives TANF assistance.

(b) The office of the secretary shall administer random drug tests to fifty percent (50%) of the pool of individuals described in subsection (a) each month.

Sec. 11. (a) If an individual:

(1) is ineligible to receive TANF assistance under this chapter;

(2) was not a parent or guardian of a child at the time the individual became ineligible to receive TANF assistance as described in subdivision (1);

(3) becomes a parent or guardian of a child after the individual becomes ineligible to receive TANF assistance as described in subdivision (1); and

(4) tests negative on a drug test administered by the office of the secretary;

the child is eligible for TANF assistance under this chapter if the child meets all the other eligibility requirements to receive TANF assistance.

(b) An individual described in subsection (a) is subject to random drug testing as described in section 10(b) of this chapter for as long as the individual receives TANF assistance.

(c) If an individual described under subsection (a) tests positive on a drug test administered by the office of the secretary, the child on whose behalf the individual receives TANF assistance is ineligible to receive TANF assistance for as long as the child resides with the individual.

Sec. 12. If an individual refuses to take a substance abuse subtle screening inventory test or drug test under this chapter, the

C o p y

following apply:

(1) The individual is ineligible to receive TANF assistance.

(2) A child on whose behalf the individual receives TANF assistance is ineligible for TANF assistance for as long as the child resides with the individual.

Sec. 13. (a) Except as provided in subsection (b), the office of the secretary shall pay the costs of a drug test administered under this chapter.

(b) If an individual tests positive on a drug test administered under this chapter, the office of the secretary shall withhold the amount of the cost of the drug test from the next payment of TANF assistance the individual receives if the individual receives TANF assistance.

Sec. 14. (a) This chapter is subject to administrative hearing procedures under IC 4-21.5.

(b) The program under this chapter must include an appeals process for individuals.

Sec. 15. A drug test administered under the program must be performed by a:

(1) SAMHSA (as defined in IC 22-10-15-3) clinical laboratory; or

(2) clinical laboratory holding a federal Clinical Laboratory Improvement Act (CLIA) certificate or a CLIA certificate of accreditation.

Sec. 16. The office of the secretary shall notify the department of child services regarding a child who is ineligible for TANF assistance under this chapter.

Sec. 17. The office of the secretary's records concerning the results of a drug test under this article may not be admitted against a defendant in a criminal proceeding.

Sec. 18. The office of the secretary may adopt rules under IC 4-22-2 necessary to implement this article.

C o p y

COMMITTEE REPORT

Mr. Speaker: Your Committee on Family, Children and Human Affairs, to which was referred House Bill 1483, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 2, line 27, after "2." insert "**(a)**".

Page 2, between lines 30 and 31, begin a new paragraph and insert:

"**(b) The office of the secretary shall implement a program established in accordance with this chapter not later than July 1, 2014.**".

Page 2, line 32, delete "written".

Page 2, line 33, after "administered" insert "**in written or electronic form**".

Page 2, line 37, after "written" insert "**or electronic**".

Page 4, line 5, delete "twenty-five percent (25%)" and insert "**fifty percent (50%)**".

Page 5, line 15, delete "twenty-five percent (25%)" and insert "**fifty percent (50%)**".

Page 6, delete lines 15 through 17, begin a new paragraph and insert:

"**Sec. 15. A drug test administered under the program must be performed by a:**

(1) SAMHSA (as defined in IC 22-10-15-3) clinical laboratory; or

(2) clinical laboratory holding a federal Clinical Laboratory Improvement Act (CLIA) certificate or a CLIA certificate of accreditation.".

Page 6, delete lines 26 through 33.

and when so amended that said bill do pass.

(Reference is to HB 1483 as introduced.)

KUBACKI, Chair

Committee Vote: yeas 9, nays 4.

C o p y