

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Committee Substitute

for

Senate Bill 387

BY SENATOR MARONEY

[Originating in the Committee on Health and Human
Resources; reported on February 26, 2021]

1 A BILL to amend and reenact §9-3-6 of the Code of West Virginia, 1931, as amended, relating to
2 the program for drug screening of applicants for cash assistance; and providing extension
3 of time frame for program.

Be it enacted by the Legislature of West Virginia:

ARTICLE 3. APPLICATION FOR AND GRANTING OF ASSISTANCE.

§9-3-6. ~~Pilot program~~ Program for drug screening of applicants for cash assistance.

1 (a) As used in this section:

2 (1) "Applicant" means a person who is applying for benefits from the Temporary
3 Assistance for Needy Families Program.

4 (2) "Board of Review" means the board established in ~~subdivision (2), section six, article~~
5 ~~two, chapter nine~~ §9-2-6(13) of this code.

6 (3) "Caseworker" means a person employed by the department with responsibility for
7 making a reasonable suspicion determination during the application process for Temporary
8 Assistance for Needy Families Program.

9 (4) "Child Protective Services" means the agency within the department responsible for
10 investigating reports of child abuse and neglect as required in §49-2-802 of this code.

11 (5) "Department" means the Department of Health and Human Resources.

12 (6) "Drug screen" or "drug screening" means any analysis regarding substance abuse
13 conducted by the Department of Health and Human Resources on applicants for assistance from
14 the Temporary Assistance for Needy Families Program.

15 (7) "Drug test" or "drug testing" means a drug test which tests urine for amphetamines
16 (amphetamine and methamphetamine) cocaine, marijuana, opiates (codeine and morphine),
17 phencyclidine, barbiturates, benzodiazepines, methadone, propoxyphene, and expanded opiates
18 (oxycodone, hydromorphone, hydrocodone, oxymorphone).

19 (8) "Secretary" means the secretary of the department or his or her designee.

20 (9) "Temporary Assistance for Needy Families Program" means assistance provided
21 through ongoing cash benefits pursuant to 42 U. S. C. § 601 *et seq.* operated in West Virginia as
22 the West Virginia Works Program pursuant to §9-9-1 *et seq.* of this code.

23 (b) Subject to federal approval, the secretary shall implement and administer a ~~three-year~~
24 ~~pilot~~ program to drug screen any adult applying for assistance from the Temporary Assistance for
25 Needy Families Program. ~~The secretary shall seek the necessary federal approval immediately~~
26 ~~following the enactment of this section and the program shall begin within sixty days of receiving~~
27 ~~federal approval.~~ The secretary shall administer this program until December 31, 2022.

28 (c) Reasonable suspicion exists if:

29 (1) A case worker determines, based upon the result of the drug screen, that the applicant
30 demonstrates qualities indicative of substance abuse based upon the indicators of the drug
31 screen; or

32 (2) An applicant has been convicted of a drug-related offense within the three years
33 immediately prior to an application for Temporary Assistance for Needy Families Program and
34 whose conviction becomes known as a result of a drug screen as set forth in this section.

35 (d) Presentation of a valid prescription for a detected substance that is prescribed by a
36 health care provider authorized to prescribe a controlled substance is an absolute defense for
37 failure of any drug test administered under the provisions of this section.

38 (e) Upon a determination by the case worker of reasonable suspicion as set forth in this
39 section an applicant shall be required to complete a drug test. The cost of administering the drug
40 test and initial substance abuse testing program is the responsibility of the Department of Health
41 and Human Resources. Any applicant whose drug test results are positive may request that the
42 drug test specimen be sent to an alternative drug-testing facility for additional drug testing. Any
43 applicant who requests an additional drug test at an alternative drug-testing facility shall be
44 required to pay the cost of the alternative drug test.

45 (f) Any applicant who has a positive drug test shall complete a substance abuse treatment
46 and counseling program and a job skills program approved by the secretary. An applicant may
47 continue to receive benefits from the Temporary Assistance for Needy Families program while
48 participating in the substance abuse treatment and counseling program or job skills program.
49 Upon completion of both a substance abuse treatment and counseling program and a job skills
50 program, the applicant is subject to periodic drug screening and testing as determined by the
51 secretary in rule. Subject to applicable federal laws, any applicant for Temporary Assistance for
52 Needy Families Program who fails to complete, or refuses to participate in, the substance abuse
53 treatment and counseling program or job skills program as required under this subsection is
54 ineligible to receive Temporary Assistance for Needy Families benefits until he or she is
55 successfully enrolled in substance abuse treatment and counseling and job skills programs. Upon
56 a second positive drug test, an applicant shall be ordered to complete a second substance abuse
57 treatment and counseling program and job skills program. He or she shall be suspended from the
58 Temporary Assistance for Needy Families Program for a period of 12 months, or until he or she
59 completes both a substance abuse treatment and counseling program and a job skills program.
60 Upon a third positive drug test an applicant shall be permanently terminated from the Temporary
61 Assistance for Needy Families Program subject to applicable federal law.

62 (g) Any applicant who refuses a drug screen or a drug test is ineligible for assistance.

63 (h) The secretary shall order an investigation and home visit from Child Protective
64 Services on any applicant whose benefits are suspended and who has not designated a protective
65 payee or whose benefits are terminated due to failure to pass a drug test. This investigation and
66 home visit may include a face-to-face interview with the child, if appropriate; the development of
67 a protection plan; and, if necessary for the health and well-being of the child, may also involve
68 law enforcement. This investigation and home visit shall be followed by a report detailing
69 recommended action which Child Protective Services shall undertake. Child Protective Services
70 is responsible for providing, directing, or coordinating the appropriate and timely delivery of

71 services to any child who is the subject of any investigation and home visit conducted pursuant
72 to this section. In cases where Child Protective Services determines that the best interests of the
73 child require court action, it shall initiate the appropriate legal proceeding.

74 (i) Any other adult members of a household that includes a person declared ineligible for
75 the Temporary Assistance for Needy Families Program pursuant to this section shall, if otherwise
76 eligible, continue to receive Temporary Assistance for Needy Families benefits.

77 (j)(1) No dependent child's eligibility for benefits under the Temporary Assistance for
78 Needy Families Program may be affected by a parent's failure to pass a drug test.

79 (2) If pursuant to this section a parent is deemed ineligible for the Temporary Assistance
80 for Needy Families Program, the dependent child's eligibility is not affected and an appropriate
81 protective payee shall be designated to receive benefits on behalf of the child.

82 (3) The parent may choose to designate another person as a protective payee to receive
83 benefits for the minor child. The designated person shall be an immediate family member, or if an
84 immediate family member is not available or declines the option, another person may be
85 designated.

86 (4) The secretary shall screen and approve the designated person.

87 (k)(1) An applicant who is determined by the secretary to be ineligible to receive benefits
88 pursuant to subsection (f) of this section due to a failure to participate in a substance abuse
89 treatment and counseling program or a job skills program who can later document successful
90 completion of a drug treatment program approved by the secretary may reapply for benefits six
91 months after the completion of the substance abuse treatment and counseling program or job
92 skills program. An applicant who has met the requirements of this subdivision and reapplies is
93 also required to submit to a drug test and is subject to the provisions of subsection (f) of this
94 section.

95 (2) An applicant may reapply only once pursuant to the exceptions contained in this
96 subsection.

97 (3) The cost of any drug screen or test and drug treatment provided under this subsection
98 is the responsibility of the individual being screened and receiving treatment.

99 (l) An applicant who is denied assistance under this section may request a review of the
100 denial by the Board of Review. The results of a drug screen or test are admissible without further
101 authentication or qualification in the review of denial by the Board of Review and in any appeal.
102 The Board of Review shall provide a fair, impartial, and expeditious grievance and appeal process
103 to applicants who have been denied Temporary Assistance for Needy Families benefits pursuant
104 to the provisions of this section. The Board of Review shall make findings regarding the denial of
105 benefits and issue a decision which either verifies the denial or reverses the decision to deny
106 benefits. Any applicant adversely affected or aggrieved by a final decision or order of the Board
107 of Review may seek judicial review of that decision.

108 (m) The secretary shall ensure the confidentiality of all drug screen and drug test results
109 administered as part of this program. Drug screen and test results shall be used only for the
110 purpose of determining eligibility for the Temporary Assistance for Needy Families Program. At
111 no time may drug screen or test results be released to any public or private person or entity or
112 any law-enforcement agency, except as otherwise authorized by this section.

113 (n) The secretary shall promulgate emergency rules pursuant to the provisions of §29A-
114 3-1 *et seq.* of this code to prescribe the design, operation, and standards for the implementation
115 of this section.

116 (o) A person who intentionally misrepresents any material fact in an application filed under
117 the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be
118 punished by a fine of not less than \$100 nor more than \$1,000 or by confinement in jail not to
119 exceed six months, or by both fine and confinement.

120 (p) The secretary shall report to the Joint Committee on Government and Finance by
121 December 31, 2016, and annually after that until the conclusion of the ~~pilot~~ program on the status

122 of the federal approval and ~~pilot~~ program described in this section. The report shall include, but is
123 not limited to:

124 (1) The total number of applicants who were deemed ineligible to receive benefits under
125 the program due to a positive drug test for controlled substances;

126 (2) The number of applicants for whom there was a reasonable suspicion due to a
127 conviction of a drug-related offense within the five years prior to an application for assistance;

128 (3) The number of those applicants that receive benefits after successful completion of a
129 drug treatment program as specified in this section; and

130 (4) The total cost to operate the program.

131 (q) Should federal approval not be given for any portion of the program as set forth in this
132 section, the secretary shall implement the program to meet the federal objections and continue to
133 operate a ~~three-year pilot~~ program consistent with the purposes of this section.

134 (r) For the purposes of the ~~pilot~~ program contained in this section, pursuant to the authority
135 and option granted by 21 U. S. C. § 862a(d)(1)(A) to the states, West Virginia hereby exempts all
136 persons domiciled within the state from the application of 21 U. S. C. § 862a(a).