STATE OF NEW YORK

4401

2021-2022 Regular Sessions

IN ASSEMBLY

February 4, 2021

Introduced by M. of A. DiPIETRO -- read once and referred to the Committee on Social Services

AN ACT to amend the social services law, in relation to requiring recipients of public assistance benefits submit to pre-qualification drug screening and testing, random drug testing, reasonable suspicion drug testing and resumption of benefits drug testing

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The social services law is amended by adding a new section 132-b to read as follows:

§ 132-b. Drug testing. 1. Every person who a. is eligible to receive TANF assistance or who receives TANF assistance on behalf of a child; and b. is at least eighteen years of age shall, as a condition of receiving TANF assistance, submit to drug testing, random drug testing, reasonable suspicion drug testing and resumption of benefits drug testing, in accordance with the requirements of this section and otherwise comply with the provisions of this section.

2. Each local social services office shall, at the time an applicant applies for TANF assistance:

a. require the applicant to take a written substance abuse subtle screening inventory test administered by a county office; and

b. notify the applicant that:

(1) the applicant is required to take a written substance abuse subtle screening inventory test;

(2) the applicant may be subject to random drug testing based on the results of the test described in paragraph a of this subdivision;

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

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

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(4) if the applicant tests positive on a drug test administered under this section, the individual or the child on whose behalf the individual receives TANF assistance may be ineligible for TANF assistance;

(5) if the applicant tests positive on a drug test administered under this section, 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; and

(6) if the applicant tests positive on a drug test administered under this section, 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.

3. a. A local social services office is considered to have reasonable suspicion to believe that an individual is engaged in the illegal use of a controlled substance if one or more of the following apply:

(1) the individual has been charged with an offense under article two hundred twenty (controlled substances offenses) or two hundred twenty-one (offenses involving marihuana) of the penal law;

(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; or

(3) the individual has previously failed a drug test administered under this section.

b. If a local social services office has knowledge that an individual has been formally charged with an offense described in subparagraph one of paragraph a of this subdivision, the local social services office shall administer a drug test to the individual.

c. If a local social services 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 paragraph a of subdivision four of this section.

d. If a local social services 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 section, the individual shall be placed in a pool of individuals who are subject to random drug testing as described in paragraph b of subdivision four of this section.

4. a. The local social services office shall administer a drug test to at least fifty percent of the pool of individuals described in paragraph c of subdivision three of this section. An individual may not be tested more than once under this section.

b. The local social services office shall administer random drug tests to twenty-five percent of the pool of individuals described in paragraph d of subdivision three of this section each month.

c. The local social services office shall provide a list of drug abuse treatment programs to any individual who tests positive under this section.

5. a. An individual who tests positive under this section 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 days and not more than thirty days until the individual tests negative in two consecutive drug tests.

b. If an individual does not test negative in two consecutive drug tests as described in paragraph a of this subdivision not later than four months after the date the office of the local social services office begins testing the individual regularly under paragraph a of this subdivision, the individual, or any child on whose behalf the individual receives TANF assistance, is ineligible to receive TANF assistance for three months from the date the local social services office determines that the individual is unable to test negative on two consecutive drug tests as described in paragraph a of this subdivision.

c. If an individual tests positive under this section and fails to provide, not later than thirty 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 months after the thirty day period expires.

d. An individual who is ineligible under paragraph b or c of this subdivision may reapply for TANF assistance after the applicable three month ineligibility period. Upon reapplying, the individual must test negative on a drug test before the individual may receive TANF assistance.

e. If an individual described in paragraph d of this subdivision 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.

6. a. An individual who reapplies for TANF assistance under paragraph d of subdivision five of this section and is eligible to receive TANF assistance is subject to random drug testing as described in paragraph b of subdivision four of this section for as long as the individual receives TANF assistance.

b. The local social services office shall administer random drug tests to twenty-five percent of the pool of individuals described in paragraph a of this subdivision each month.

7. a. If an individual who is ineligible to receive TANF assistance under the provisions of this section and who was not a parent or guardian of a child at the time he or she became ineligible to receive TANF assistance subsequently becomes a parent or guardian of a child and tests negative on a drug test administered by the local social services office, the child is eligible for TANF assistance under this section if the child meets all the other eligibility requirements to receive TANF assistance.

b. An individual described in paragraph a of this subdivision is subject to random drug testing as described in paragraph b of subdivision six of this section for as long as the individual receives TANF assistance.

c. If an individual described under paragraph a of this subdivision tests positive on a drug test administered by the local social services office, 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.

8. If an individual refuses to take a substance abuse subtle screening inventory test or drug test under this section, the following apply:

a. The individual is ineligible to receive TANF assistance.

b. 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.

9. a. Except as provided in paragraph b of this subdivision, the local social services office shall pay the costs of a drug test administered under this section.

b. If an individual tests positive on a drug test administered under this section, the local social services office 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.

10. Any determination of ineligibility for TANF assistance under the provisions of this section is subject to appeal and judicial review as provided in section twenty-two of this chapter.

11. A drug test administered under the program must be performed by a SAMHSA (as defined in IC 22-10-15-3) certified laboratory.

12. The local social services office shall notify the office of children and family services regarding a child who is ineligible for TANF assistance under this section. The office of children and family services shall, not later than nine months after the date it receives the notice, conduct a home visit at the child's residence to determine whether to pursue the report as a report of suspected child abuse or neglect.

13. The local social services office's records concerning the results of a drug test under this section may not be admitted against a defendant in a criminal proceeding.

14. As used in this section: a. "Controlled substance" means any substance listed in schedule I, II, III, IV or V of section thirty-three hundred six of the public health law other than marihuana, but including concentrated cannabis as defined in paragraph (a) of subdivision four of section thirty-three hundred two of such law.

b. "TANF assistance" means assistance under the federal Temporary Assistance for Needy Families program under 42 U.S.C. 601 et seq.

c. "Tests negative" or "testing negative" means that an individual:

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

(2) tests positive for the use of a controlled substance in the individual's body but has a valid prescription or an order of a practitioner acting in the course of the practitioner's professional practice for the controlled substance.

d. "Tests positive" or "testing positive" means an individual:

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

(2) does not possess a valid prescription or an order of a practitioner acting in the course of the practitioner's professional practice for the controlled substance.

§ 2. This act shall take effect on the first of January next succeeding the date on which it shall have become a law.