

**REPORT OF THE
VIRGINIA DEPARTMENT OF SOCIAL SERVICES**

RECIPIENT DRUG TESTING STUDY

**TO THE GOVERNOR AND
THE GENERAL ASSEMBLY OF VIRGINIA**



SENATE DOCUMENT NO. 5

**COMMONWEALTH OF VIRGINIA
RICHMOND
1998**



COMMONWEALTH of VIRGINIA

Office of the Governor

George Allen
Governor

Robert C. Metcalf
Secretary of Health and Human Resources

November 14, 1997

TO: The Honorable George Allen

and

The General Assembly of Virginia

The report contained herein is pursuant to Senate Joint Resolution 356 as approved by the 1997 General Assembly.

As required by Senate Joint Resolution 356, the Virginia Department of Social Services, at the request of the Secretary of Health and Human Services, conducted a study on drug testing recipients of cash assistance to needy families. This report discusses the policy implications of drug testing, the potential impact on families and offers an alternative to drug testing that would still assist families in removing the barrier to self-sufficiency that substance abuse may cause.

Respectfully Submitted,

A handwritten signature in cursive script that reads "Robert C. Metcalf".

Robert C. Metcalf

RECIPIENT DRUG TESTING STUDY

Executive Summary

Senate Joint Resolution 356 passed by the 1997 General Assembly directed the Secretary of Health and Human Resources to conduct a study on drug testing of cash assistance to needy families recipients in Virginia.

As a result of efforts at the state and federal level to require most recipients to work, it is important to develop policy that addresses substance abuse problems in a way that effectively assists the family in removing this barrier to self-sufficiency and family well-being. Time limits on receipt of cash assistance add a sense of urgency to the need for the state to identify problems of substance abuse and ensure that those in need of treatment are linked to resources.

There are several complex policy issues that arise regarding drug testing for cash assistance applicants and recipients. The role of drug testing in the context of a cash assistance program for needy families is a fundamental issue. The underlying premise of both Virginia and federal welfare reform efforts is that the cash assistance program is time-limited and is to assist needy families to progress from dependence on government assistance to self-sufficiency through employment. The roles of drug testing in this effort may be to: (1) identify recipients who need substance abuse treatment; (2) monitor compliance with treatment; (3) screen recipients on behalf of employers; and, (4) try to reduce drug use by sanctioning welfare recipients who test positive.

Costs of drug testing are high, ranging from \$2.00 up to \$70.00 per test, not including increased administrative costs associated with collecting samples, security, and evaluation of results. A random sample approach of the public assistance caseload would decrease costs as compared to testing all applicants and recipients, but would not identify all individuals who may need treatment in order to better take care of and support their children.

Several unresolved legal issues have been identified regarding mandatory drug testing of recipients. These include a Fourth Amendment issue regarding search and seizure, the unreliability of certain test results, and whether and under what conditions test results are admissible as evidence in a court of law. Because these legal issues have not yet been tested in court and because costs of drug testing are high, only three states (Nevada, Ohio, and Maryland) have opted to make drug testing a requirement of their cash assistance programs.

Some states are using client interview screening instruments as an alternative for drug testing to identify families where substance or alcohol abuse may be a barrier to employability. There is a cost associated with use of these instruments, but early evaluation results are promising. Results of the screening are used to determine the appropriateness of a referral for further testing, diagnosis, and treatment.

The role of sanctions for a failed drug test is another fundamental policy issue. States that have adopted such a policy do not have a long enough history to demonstrate that this policy is effective in deterring drug use.

Current Virginia policy addresses the drug problem in three areas: (1) a protective payee may be required in cases where the parent has persistently demonstrated mismanagement of funds in meeting the needs of the child(ren); (2) a protective payee is required when a caretaker on probation or parole has failed a drug test as reported by the Department of Corrections; and, (3) an individual who has been convicted of a drug-related felony after August 22, 1996 is excluded from eligibility for Temporary Assistance for Needy Families (TANF) and Food Stamps as required by federal law.

Treatment for substance abuse is a key component in removing a serious barrier to employability and long-term self-sufficiency for the family. The Secretary of Health and Human Resources' TANF Advisory Committee has studied the option allowed under the federal block grant to drug test recipients. The Committee's proposed recommendation is that the state not institute universal drug testing as a condition of eligibility, but rather that all adult recipients must go through an interview-based drug screening based on reliable instruments currently available. Those who fail the screening would be referred to the Community Services Board at the time of approval for TANF and would be required to follow the prescribed drug treatment program. Instituting such a policy will have the following effects on the TANF Program:

- Screening immediately will ensure quicker identification of persons with substance abuse problems and quicker intervention.
- Intervening immediately may prevent problems from occurring at the employment site, which will result in better relations with employers.
- Screening is less costly and easier to implement than drug testing.
- Treating will help alleviate substance abuse problems, which will lead to a better environment for children.
- Reducing substance abuse problems will reduce the crime rate.
- Treating drug abuse will have a positive effect on the long term possibility of a client becoming self-sufficient.

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RECIPIENT DRUG TESTING STUDY

STUDY CHARGE

Senate Joint Resolution 356 passed by the 1997 General Assembly states: “[t]he Secretary shall also study specific topics referred to it by the 1997 Session of the General Assembly, including Senate Joint Resolution No. 303 on drug testing of recipients of cash assistance to needy families in Virginia. The Secretary shall complete his work in time to submit his initial findings and recommendations by November 15, 1997, to the Governor and the 1998 Session of the General Assembly, and his subsequent findings and recommendations by November 15, 1998, to the Governor and the 1999 Session of the General Assembly.” (See Appendix I for a copy of the resolution.) Senate Joint Resolution 303 states: “[t]he study shall include consideration of the fiscal and policy implications of testing new applicants for, as well as current recipients of, cash assistance, for use of controlled substances; the constitutionality of any testing programs; the need for drug treatment linkages; and the impact on the families if the sanction used is reducing the benefits of those who test positive.”

BACKGROUND

According to the United States Department of Health and Human Services, research studies have found that between 10 and 20% of welfare recipients have a substance abuse problem, with about 5% of recipients affected enough to substantially limit their day-to-day functioning.¹ States have begun to grapple with the question of what policies to adopt toward welfare recipients with substance abuse problems in conjunction with efforts to require most welfare recipients to work or participate in employment programs. A recent Urban Institute study concludes that substance abuse has emerged as one of the primary personal or family barriers to employment among welfare recipients, together with physical disabilities, mental health problems, children’s health or behavioral problems, domestic violence, housing instability, and low basic skills or learning disabilities.²

The federal Personal Responsibility and Work Opportunity Reconciliation Act of August 22, 1996 gives states the option of testing Temporary Assistance for Needy Families (TANF) recipients for illegal drug use and sanctioning those who test positive. The law also prohibits states from providing cash aid or Food Stamps to those convicted after August 22, 1996 of drug-related felony offenses, unless the state chooses to pass a law modifying this requirement or opting out of it entirely. Virginia implemented the federal prohibition against giving cash assistance to drug-convicted felons effective February 1, 1997. There are no provisions in the federal law regarding alcohol abuse. The federal five-year lifetime limit on receipt of cash assistance and Virginia’s two-year limit necessitate finding ways to help recipients with substance abuse problems become more employable.

Substance abuse problems may prevent recipients from being able to undertake the tasks

necessary to find employment, or recipients dealing with these issues may lack the self-confidence they need to take on new challenges. Others may be able to find employment, but may not be able to sustain it over the long term. In their most severe forms, these problems may be so debilitating that it is impossible for a recipient to search for employment or participate in an education or training program until medical treatment is obtained. Other individuals may be able to comply with the work requirements, only to fail a potential employer's drug test.

POLICY IMPLICATIONS

There are several complex policy issues that arise regarding drug testing for cash assistance applicants and recipients.

- **The role of drug testing.** There are four basic reasons for drug testing recipients:

(1) To identify recipients who need substance abuse treatment. Treatment for substance abuse increases the individual's employability and chance to achieve self-sufficiency and is of enormous benefit to the well-being of the children.

(2) To monitor compliance with treatment. If compliance with a treatment plan is a condition of eligibility or a requirement for work participation, drug testing is a means of monitoring that compliance.

(3) To screen recipients on behalf of employers. Many employers routinely drug test job applicants. When an individual fails an employer's drug test, much time is wasted in terms of job readiness, and employers may become skeptical of hiring welfare recipients. Local social service agencies could use a drug test to ensure that a welfare recipient referred for a job opening is ready to work.

(4) To try to reduce drug use by sanctioning welfare recipients who test positive. While studies have shown that sanctions are important for increasing participation by recipients in welfare-to-work programs, the experience of several states with full family sanctions suggests that families with serious, unaddressed problems are likely to be sanctioned. In particular, Utah found that many of those being sanctioned for noncompliance in its work program had previously undetected problems, with mental health problems four times greater among sanctioned families and substance abuse problems twice as high.³ There is no existing evaluation data to demonstrate the effectiveness of sanctioning for a failed drug test, since the three states who are drug testing recipients only recently adopted the policy. Job Opportunities and Basic Skills Training (JOBS) participants in Oregon can be mandated to participate in substance abuse or mental health treatment to meet their JOBS participation requirement if there is evidence that these issues are keeping a recipient from fulfilling their plan for becoming self-sufficient. Without such evidence, recipients who have failed to follow through with required program activities may be given the choice to undergo an assessment to determine whether the recipient is in need of substance abuse treatment before the conciliation

and sanctioning process begins.⁴

Current Virginia policy has procedures for TANF cases needing a protective payee. A protective payee should be established when a parent has persistently demonstrated an inability to manage funds in the best interest of the child(ren) and when continued receipt and management of the assistance check would represent a threat to the health or safety of the child(ren). Evidence of mismanagement includes but is not limited to: continued evidence that the child(ren) is not properly fed or clothed and that expenditures for the child(ren) are made in such a way as to threaten the child's chances for healthy growth and development, or when there is persistent and deliberate failure to meet obligations for rent, food, school supplies, and other essentials. In addition, current policy requires an attempt by the local agency to set up a payee any time the adult caretaker is sanctioned. Thus, a mechanism currently exists for a payee for the TANF check when the needs of the children are not met due to the caretaker's drug or alcohol abuse or when the caretaker is sanctioned. An addition to the protective payee policy was effective July 1, 1997 as a result of a 1997 state legislative change. When informed by a probation or parole officer that a TANF caretaker has failed a drug test while on probation or parole, the local social services agency must establish a protective payee for the TANF payment. The protective payee arrangement must remain in place for one year, provided the caretaker does not fail a subsequent drug test.

- **The cost of drug testing.** Information from the Department of Mental Health, Mental Retardation, and Substance Abuse Services (DMHMRSAS) indicates that there are two state contracts for drug testing. One of these costs \$2.00 per individual to test for one substance and \$6.00 per individual to test for several substances. The current adult TANF applicant/recipient count is approximately 50,000⁵, thus the cost for a one substance test for each adult is \$100,000 and \$300,000 for the test for several substances. Costs per fiscal year increase based on how frequently tests are done. Additional administrative costs would be incurred for staff to administer the tests. If a testing service is used, the cost per test increases to \$20 (\$1,000,000 to test each adult/recipient once). The cost could rise to as much as \$70 per individual with additional laboratory testing to confirm initial test results. It should be noted that unless "the drug of choice" has been revealed by an individual the chances of hitting on the one used is not likely.

A random drug testing approach would reduce the cost incurred by testing all adult applicants and recipients, but this approach would not identify all individuals who need treatment.

Due to high cost of testing and unresolved legal issues, only three states (Nevada, Ohio, and Maryland), according to recent American Public Welfare Association's data, test recipients for illegal drugs.⁶ Other states use client interview instruments to determine which recipients should be referred for further diagnosis and treatment. Initial evaluations of effectiveness of these instruments show promising results. A significant advantage of these screening instruments are that substance abuse and alcohol abuse problems can be

identified before failures appear in meeting work requirements or before failing a potential employer's drug test. One version of this test, the Substance Abuse Subtle Screening Inventory (SASSI), costs approximately \$2.00 per individual test.⁷ Thus, costs are comparable to the drug test for one illegal substance. The SASSI is a short, one-page self-report screening tool for chemical dependency that can be administered and scored in 20-25 minutes. Because the SASSI has objective decision rules to classify individuals as chemically dependent (alcohol or other drugs) or non-chemically dependent, there is no training required for its administration. The SASSI is especially effective in identifying early stage chemically dependent individuals who are either in denial or deliberately trying to conceal their chemical dependency pattern.

- **Constitutional considerations and reliability of drug testing.** Some states contacted about their drug testing policy have stated unresolved Fourth Amendment legal issues around search and seizure and the questionable reliability of any one test. The Fourth Amendment issue may be minimized or avoided by obtaining the written acknowledgment by the recipients that they are aware that a test for illegal drugs is a requirement for the receipt of cash assistance. There are other unresolved legal issues concerning reliability of certain drug tests and whether or not test results are admissible in court. A request has been sent to the Office of the Attorney General for a response addressing these issues.
- **Availability of treatment.** When a substance abuse problem is identified by the local department of social services, either through a drug test or an interview screening instrument, a referral to the local mental health community service board is appropriate. If drug treatment is advised, Medicaid coverage (effective 2/1/97) for substance abuse treatment is available only for pregnant women.⁸ According to DMHMRSAS, waiting lists exist for some treatment programs, but no data exists on the extent of the waiting lists, and availability of treatment resources varies widely across the state. For parents in residential or day treatment, child care may be an issue.
- **Effectiveness of drug treatment.** There is a consensus among researchers that drug treatment is cost-effective and results in reduced drug use, reduced criminal justice involvement, and increased employability.⁹ State-reported treatment data show rather consistent results across states for client outcomes post-treatment as compared to pre-treatment: about a one-third drop in drug use, nearly a 60% increase in employment, and roughly \$6.00 in benefits for every dollar invested in treatment.¹⁰ Benefits measured from the point of view of taxpayers are: a decrease in crime, a decrease in public assistance payments, and a decrease in health care expenditures.

IMPACT ON FAMILY

Depending on the policy approach, the individual's response to the policy, and the seriousness of the substance abuse problem, various impacts on the family can be anticipated.

- Reduction of benefits due to a failed drug test may be the incentive for some individuals to seek treatment or may be a deterrent from drug use.
- Reduction of benefits due to a failed drug test would be less money for the children's needs.
- Sanction for a failed drug test without linkage to treatment may not accomplish the desired goal of decreased drug use.
- Establishment of a protective payee for the TANF check in families where substance abuse is a problem helps to ensure the children's financial needs are met.
- Treatment for substance abuse increases the parent's employability and chance to achieve self-sufficiency.
- Treatment for substance abuse benefits all families in the community due to reduction in crime and taxpayer expense.

PROPOSAL

The Secretary of Health and Human Resources' TANF Advisory Committee has studied the option allowed under the federal block grant to drug test recipients. The Committee's proposed recommendation is that the state not institute universal drug testing as a condition of eligibility, but rather that all adult recipients must go through an interview-based drug screening based on reliable instruments currently available. Those who fail the screening would be referred to the Community Services Board at the time of approval for TANF and would be required to follow the prescribed drug treatment program. Instituting such a policy will have the following effects on the TANF Program:

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CONCLUSION

Identifying families receiving welfare who have substance abuse problems is a desirable goal in order to remove this barrier to employment and the family's self-sufficiency and well-being. The

role of recipient drug testing should be decided in this context. The role of drug testing can be to identify the illegal drug user in order to sanction the behavior and be a deterrent, or the purpose can be to identify substance abuse as one of the barriers to employment, self-sufficiency, and family well-being, and provide assistance to the family to remove the barrier. If the latter is the primary purpose, then identification of the substance abuse may be alternatively accomplished by: (1) use of client interview screening to assess barriers to employability before failures occur in the work program and refer for diagnosis and treatment; or, (2) referral for diagnosis and treatment when failure to comply with work requirements reveal a problem.

SOURCES

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2. Pavetti, L. And Olson, K. (1996) Personal and Family Challenges to the Successful Transition from Welfare to Work. Final Report. Washington, D. C.: The Urban Institute.
3. Strawn, J. (1997). Substance Abuse and Welfare Reform Policy.
4. Ibid.
5. Va. Department of Social Services data from the Virginia Client Information System (VACIS) (1997).
6. American Public Welfare Association, Welfare Reform Information Center. State-By-State Welfare Reform Policy Options Information, From APWA's Survey of the Status of States' Implementation of Welfare Reform, July 1997.
7. The Substance Abuse Subtle Screening Inventory (SASSI) Institute (1997), General Information.
8. Department of Medical Assistance Services (DMAS) Medicaid Memo from Joseph M. Teefey, Director, to Community Service Boards, April 11, 1997, Subject: Expanded Mental Health, Mental Retardation, and Substance Abuse Services.
9. Strawn, J. (1997). Substance Abuse and Welfare Reform Policy.
10. Gerstein, D. R., Johnson, R. A., Larison, C. L., Harwood, H. J., and Fountain, D. (1997). Alcohol and Drug Abuse Treatment for Parents and Welfare Recipients: Outcomes, Benefits and Costs. Washington, D. C.: Office of the Asst. Secretary for Planning and Evaluation, U. S. Department of Health and Human Services.

APPENDIX I

SENATE JOINT RESOLUTION NO. 356

ting the Secretary of Health and Human Resources, with the assistance of the Advisory Commission on Welfare Reform, to study methods to ensure the continued success of Virginia Initiative for Employment Not Welfare (VIEW) clients as they work toward self-sufficiency.

Agreed to by the Senate, February 17, 1997

Agreed to by the House of Delegates, February 13, 1997

WHEREAS, quarterly implementation of the Virginia Initiative for Employment Not Welfare (VIEW) began in Culpeper, Fauquier, Madison, Orange, and Rappahannock Counties on July 1, 1995, and in Amherst, Appomattox, Bedford, and Campbell Counties and the Cities of Bedford and Lynchburg on October 1, 1995, and has continued in other regions of the Commonwealth; and

WHEREAS, because of encouraging early results and the requirements of national welfare reform, statewide implementation of the VIEW program has been accelerated and will be complete by October 1, 1997; and

WHEREAS, by the end of the 1996 fiscal year, declines in welfare caseloads had saved \$24 million in state and federal funds and 69 percent of VIEW participants required to be in a work activity had earned \$2.7 million in addition to AFDC benefits; and

WHEREAS, much of the initial success of the VIEW program has been due to the cooperation of local businesses, chambers of commerce, local social services agencies, Private Industry Councils, and church groups that have provided jobs, helped with transportation, and volunteered their time; and

WHEREAS, VIEW participants in the first group of localities to implement the VIEW program will begin to relinquish cash assistance benefits in July of 1997 and one year later these individuals may not be able to rely on previously provided support services such as Medicaid, day care, and transportation; and

WHEREAS, the Commonwealth wants to encourage efforts in cooperation with the private sector to help individuals complete successfully the transition to self-sufficiency, to help families maintain and improve their new independent economic status, and to preserve the vitality of communities; now, therefore; be it

RESOLVED by the Senate, the House of Delegates concurring, That the Secretary of Health and Human Resources, with the assistance of the Advisory Commission on Welfare Reform, be requested to study methods to ensure the continued success of Virginia Initiative for Employment Not Welfare (VIEW) clients as they work toward self-sufficiency. In conducting the study, the Secretary shall consider options for helping working families, with particular attention to those families who live in the first regions to implement the VIEW program. Such options shall include, but not be limited to, expanding employment opportunities, increasing the availability and accessibility of quality child day care and transportation assistance, expanding training and education opportunities, and examining health care availability. The Secretary shall also study specific topics referred to it by the 1997 Session of the General Assembly, including Senate Joint Resolution No. 346 on welfare fraud and Senate Joint Resolution No. 303 on drug testing of recipients of cash assistance to needy families in Virginia.

All agencies of the Commonwealth shall provide assistance to the Secretary of Health and Human Resources for this study, upon request.

The Secretary shall complete his work in time to submit his initial findings and recommendations by November 15, 1997, to the Governor and the 1998 Session of the General Assembly, and his subsequent findings and recommendations by November 15, 1998, to the Governor and the 1999 Session of the General Assembly, as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents.

