

House Bill 772 (AS PASSED HOUSE AND SENATE)

By: Representative Morris of the 156th

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 4 of Title 49 of the Official Code of Georgia Annotated, relating to public
2 assistance, so as to provide for drug testing for applicants and recipients of food stamps or
3 TANF benefits upon a reasonable suspicion of drug use; to provide requirements for drug
4 testing; to provide for penalties for any person who fails a drug test; to provide for
5 reapplication; to provide for confidentiality of records; to require that electronic benefits
6 transfer cards for food stamp benefits contain a photo of the recipient; to provide for an
7 effective date; to provide for related matters; to repeal conflicting laws; and for other
8 purposes.

9 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

10 style="text-align:center">**SECTION 1.**

11 Chapter 4 of Title 49 of the Official Code of Georgia Annotated, relating to public assistance,
12 is amended in Article 1, relating to general provisions, by adding new Code sections to read
13 as follows:

14 "49-4-20.

15 (a) As used in this Code section, the term 'established drug test' means the collection and
16 testing of bodily fluids administered in a manner equivalent to that required by the
17 Mandatory Guidelines for Federal Workplace Drug Testing Programs established by the
18 United States Department of Health and Human Services or other professionally valid
19 procedures approved by the department; provided, however, that where possible and
20 practicable, a swab test shall be used in lieu of a urinalysis.

21 (b) The department shall adopt rules and regulations for an established drug test that
22 includes the following:

23 (1) Which illegal drugs will be the subject of testing;

24 (2) Methods for assuring minimal privacy intrusions during collection of body fluid
25 specimens for such testing;

- 26 (3) Methods for assuring proper storage, transportation, and handling of such specimens
27 in order to ensure the integrity of the testing process;
- 28 (4) The identity of those persons entitled to the results of such tests and methods for
29 ensuring that only authorized persons are given access to such results;
- 30 (5) A list of laboratories qualified to conduct established drug tests;
- 31 (6) A list of approved substance abuse treatment providers;
- 32 (7) Procedures for persons undergoing drug testing prior to the collection of body fluid
33 specimens for such testing, so as to provide information regarding the use of any drug
34 pursuant to a medical prescription or as otherwise authorized by law which may affect
35 the results of such test; and
- 36 (8) A requirement that any applicant who demonstrates proof of active and current
37 Medicaid benefits shall pay a drug screening application fee of no more than \$17.00, and
38 no authorized test examiner shall conduct a drug test if an applicant demonstrates active
39 and current Medicaid benefits unless the applicant presents a receipt proving that he or
40 she has paid the required drug screening application fee. Eligible applicants who do not
41 have active and current Medicaid benefits shall be responsible for paying the full cost of
42 administering the drug test upon presentation to an authorized examiner.
- 43 (c)(1) The department shall require a drug test consistent with subsection (b) of this Code
44 section to screen an applicant or recipient of food stamps at any time a reasonable
45 suspicion exists that such applicant or recipient is using an illegal drug. The department
46 may use any information obtained by the department to determine whether such
47 reasonable suspicion exists, including, but not limited to:
- 48 (A) An applicant's or recipient's demeanor;
- 49 (B) Missed appointments and arrest or other police records;
- 50 (C) Previous employment or application for employment in an occupation or industry
51 that regularly conducts drug screening; and
- 52 (D) Termination from previous employment due to unlawful use of a controlled
53 substance or controlled substance analog or prior drug screening records of the
54 applicant or recipient indicating unlawful use of a controlled substance or controlled
55 substance analog.
- 56 (2) The cost of drug testing shall be the responsibility of the individual tested, provided
57 that the individual does not submit proof of active and current Medicaid benefits to
58 subsidize the cost of such drug testing pursuant to paragraph (8) of subsection (b) of this
59 Code section. No assistance payment shall be delayed because of the requirements of this
60 Code section, and any payments made prior to the department's receipt of a test result
61 showing a failure shall be recoverable.

62 (d) Any recipient of food stamps who tests positive for controlled substances as a result
63 of a drug test required under this Code section shall be ineligible to receive food stamps as
64 follows:

65 (1) For a first positive result, the recipient shall be ineligible for food stamps for one
66 month and until he or she tests negative in a retest;

67 (2) For a second positive result, the recipient shall be ineligible for food stamps for three
68 months and until he or she tests negative in a retest; and

69 (3) For a third and each subsequent positive result, the recipient shall be ineligible for
70 food stamps for one year and until he or she tests negative in a retest unless the individual
71 meets the requirements of subsection (f) of this Code section.

72 (e) The department shall:

73 (1) Provide notice of possible drug testing based on reasonable suspicion to each
74 individual at the time of application. Dependent children under the age of 18 shall be
75 exempt from the drug testing requirement;

76 (2) Advise each individual to be tested, before the test is conducted, that he or she may,
77 but is not required to, advise the agent administering the test of any prescription or over
78 the counter medication he or she is taking;

79 (3) Require each individual to be tested to sign a written acknowledgment that he or she
80 has received and understands the notice and advice provided under paragraphs (1) and (2)
81 of this subsection;

82 (4) Assure each individual being tested a reasonable degree of dignity while producing
83 and submitting a sample for drug testing, consistent with the state's need to ensure the
84 reliability of the sample;

85 (5) Specify circumstances under which an individual who fails a drug test has the right
86 to take one or more additional tests;

87 (6) Inform an individual who tests positive for a controlled substance and is deemed
88 ineligible for food stamps for one year pursuant to paragraph (3) of subsection (d) of this
89 Code section that the individual may reapply for food stamps six months after the date
90 of the positive drug test if he or she meets the requirements of subsection (f) of this Code
91 section; and

92 (7) Provide any individual who tests positive with a list of substance abuse treatment
93 providers approved by the department which are available in the area in which he or she
94 resides. Neither the department nor the state shall be responsible for providing or paying
95 for substance abuse treatment.

96 (f) An individual who tests positive for an illegal drug and is denied food stamps for one
97 year may reapply for food stamps after six months if the individual can document the
98 successful completion of a substance abuse treatment program offered by a provider

99 approved by the department. The cost of any drug testing provided under this Code section
100 and substance abuse treatment shall be the responsibility of the individual being tested and
101 receiving treatment. An individual who fails a drug test administered pursuant to
102 subsection (c) of this Code section may reapply for food stamps under this subsection only
103 once.

104 (g) If a parent is deemed ineligible for food stamps as a result of failing a drug test
105 conducted under this Code section, the parent may choose to designate another individual
106 to receive food stamps for the parent's minor child. The designated individual must be an
107 immediate family member or, if an immediate family member is not available or the family
108 member declines the option, another individual approved by the department. The
109 designated individual shall be subject to possible drug testing based on a reasonable
110 suspicion. If the designated individual tests positive for controlled substances, he or she
111 shall be ineligible to receive benefits on behalf of the child.

112 (h) The results of any drug test performed according to this Code section shall not be
113 subject to disclosure under Article 4 of Chapter 18 of Title 50, relating to inspection of
114 public records. Such results shall not be used as a part of a criminal investigation or
115 criminal prosecution. Such results shall not be used in a civil action or otherwise disclosed
116 to any person or entity without the express written consent of the person tested or his or her
117 heirs or legal representative. All such records shall be destroyed and deleted five years
118 after the date of the test.

119 (i) No testing shall be required by the provisions of this Code section for any person whom
120 the department determines is significantly hindered, because of a physical or mental
121 handicap or developmental disability, from doing so or for any person enrolled in an
122 enhanced primary care case management program operated by the Department of
123 Community Health, Division of Medical Assistance to serve frail elderly and disabled
124 beneficiaries to improve the health outcomes of persons with chronic health conditions by
125 linking primary medical care with home and community based services. In addition, no
126 testing shall be required by the provisions of this Code section for any individuals receiving
127 or on a waiting list for long-term services and supports through a non-Medicaid home and
128 community based services program or for any individual residing in a facility such as a
129 nursing home, personal care home, assisted living community, intermediate care facility
130 for the intellectually or developmentally disabled, community living arrangement, or host
131 home.

132 (j) The department shall adopt rules to implement this Code section.

133 49-4-21.

134 (a) The department shall require that all electronic benefits transfer cards which include
 135 food stamp benefits contain a photograph of one or more members of a household who are
 136 authorized to use such food stamp benefits. The department is authorized to promulgate
 137 regulations necessary to implement the provisions of this Code section.

138 (b) This Code section shall become effective on January 1, 2016."

139 **SECTION 2.**

140 Said chapter is further amended by revising Code Section 49-4-193, relating to established
 141 drug testing for TANF benefits, as follows:

142 "49-4-193.

143 (a) As used in this Code section, the term 'established drug test' means the collection and
 144 testing of bodily fluids administered in a manner equivalent to that required by the
 145 Mandatory Guidelines for Federal Workplace Drug Testing Programs (~~53 C.F.R. 11979,~~
 146 ~~et seq., as amended~~) established by the United States Department of Health and Human
 147 Services or other professionally valid procedures approved by the department; provided,
 148 however, that where possible and practicable, a swab test shall be used in lieu of a
 149 urinalysis.

150 (b) The department shall adopt rules and regulations for an established drug test which
 151 shall include the following:

- 152 (1) Which illegal drugs will be the subject of testing;
- 153 (2) Methods for assuring minimal privacy intrusions during collection of body fluid
 154 specimens for such testing;
- 155 (3) Methods for assuring proper storage, transportation, and handling of such specimens
 156 in order to ensure the integrity of the testing process;
- 157 (4) The identity of those persons entitled to the results of such tests and methods for
 158 ensuring that only authorized persons are given access to such results;
- 159 (5) A list of laboratories qualified to conduct established drug tests;
- 160 (6) A list of approved substance abuse treatment providers;
- 161 (7) Procedures for persons undergoing drug testing, prior to the collection of body fluid
 162 specimens for such testing, to provide information regarding use of any drug pursuant to
 163 a medical prescription or as otherwise authorized by law which may affect the results of
 164 such test; and
- 165 (8) ~~A requirement that the test be conducted no later than 48 hours after the application~~
 166 ~~is approved by the department for TANF eligibility. Proof of eligibility from the~~
 167 ~~department shall be issued to the applicant. The applicant shall show proof of eligibility~~
 168 ~~to an authorized test examiner prior to submitting to the test, and~~

169 ~~(9)~~ A requirement that any applicant who demonstrates proof of active and current
 170 Medicaid benefits shall pay a drug screening application fee of no more than \$17.00, and
 171 no authorized test examiner shall conduct a drug test if an applicant demonstrates active
 172 and current Medicaid benefits unless the applicant presents a receipt proving that he or
 173 she has paid the required drug screening application fee. Eligible applicants who do not
 174 have active and current Medicaid benefits shall be responsible for paying the full cost of
 175 administering the drug test upon presentation to an authorized examiner.

176 (c)(1) The department shall require a drug test consistent with subsection (b) of this Code
 177 section to screen ~~each individual who applies for assistance~~ an applicant or recipient at
 178 any time a reasonable suspicion exists that such applicant or recipient is using an illegal
 179 drug. The department may use any information obtained by the department to determine
 180 whether such reasonable suspicion exists, including, but not limited to:

181 (A) An applicant's or recipient's demeanor;

182 (B) Missed appointments and arrest or other police records;

183 (C) Previous employment or application for employment in an occupation or industry
 184 that regularly conducts drug screening; and

185 (D) Termination from previous employment due to unlawful use of a controlled
 186 substance or controlled substance analog or prior drug screening records of the
 187 applicant or recipient indicating unlawful use of a controlled substance or controlled
 188 substance analog.

189 (2) The cost of drug testing shall be the responsibility of the individual tested, provided
 190 that the individual does not submit proof of active and current Medicaid benefits to
 191 subsidize the cost of such drug testing pursuant to paragraph ~~(9)~~(8) of subsection (b) of
 192 this Code section. No assistance payment shall be delayed because of the requirements
 193 of this Code section, and any payments made prior to the department's receipt of a test
 194 result showing a failure shall be recoverable.

195 (d) Any recipient of cash assistance under this article who tests positive for controlled
 196 substances as a result of a drug test required under this Code section shall be ineligible to
 197 receive TANF benefits as follows:

198 (1) For a first positive result, the recipient shall be ineligible for TANF benefits for one
 199 month and until he or she tests negative in a retest;

200 (2) For a second positive result, the recipient shall be ineligible for TANF benefits for
 201 three months and until he or she tests negative in a retest; and

202 (3) For a third and each subsequent positive result, the recipient shall be ineligible for
 203 TANF benefits for one year and until he or she tests negative in a retest unless the
 204 individual meets the requirements of subsection (f) of this Code section.

205 (e) The department shall:

- 206 (1) Provide notice of possible drug testing based on reasonable suspicion to each
 207 individual at the time of application. ~~The notice shall advise the individual that drug~~
 208 ~~testing will be conducted as a condition for receiving TANF benefits and that the~~
 209 ~~individual shall bear the cost of testing. If the individual tests negative for controlled~~
 210 ~~substances, the department shall increase the amount of the initial TANF benefit by the~~
 211 ~~amount paid by the individual for the drug testing. However, if the individual used an~~
 212 ~~active and current Medicaid benefit pursuant to paragraph (9) of subsection (b) of this~~
 213 ~~Code section to subsidize the cost of the test, the individual shall not be eligible for direct~~
 214 ~~TANF reimbursement. The individual shall be advised that the required drug testing may~~
 215 ~~be avoided if the individual does not apply for TANF benefits. Dependent children under~~
 216 ~~the age of 18 are exempt from the drug testing requirement;~~
- 217 ~~(2) Require that for two-parent families, one parent shall comply with the drug testing~~
 218 ~~requirement;~~
- 219 ~~(3) Require that any teen parent who is not required to live with a parent, legal guardian,~~
 220 ~~or other adult caretaker relative shall comply with the drug testing requirement;~~
- 221 ~~(4)~~(2) Advise each individual to be tested, before the test is conducted, that he or she
 222 may, but is not required to, advise the agent administering the test of any prescription or
 223 over the counter medication he or she is taking;
- 224 ~~(5)~~(3) Require each individual to be tested to sign a written acknowledgment that he or
 225 she has received and understood the notice and advice provided under paragraphs (1)
 226 and ~~(4)~~ (2) of this subsection;
- 227 ~~(6)~~(4) Assure each individual being tested a reasonable degree of dignity while
 228 producing and submitting a sample for drug testing, consistent with the state's need to
 229 ensure the reliability of the sample;
- 230 ~~(7)~~(5) Specify circumstances under which an individual who fails a drug test has the
 231 right to take one or more additional tests;
- 232 ~~(8)~~(6) Inform an individual who tests positive for a controlled substance and is deemed
 233 ineligible for TANF benefits for one year pursuant to paragraph (3) of subsection (d) of
 234 this Code section that the individual may reapply for those benefits six months after the
 235 date of the positive drug test if he or she meets the requirements of subsection (f) of this
 236 Code section; and
- 237 ~~(9)~~(7) Provide any individual who tests positive with a list of substance abuse treatment
 238 providers approved by the department which are available in the area in which he or she
 239 resides. Neither the department nor the state shall be responsible for providing or paying
 240 for substance abuse treatment.
- 241 (f) An individual who tests positive for an illegal drug and is denied TANF benefits for
 242 one year may reapply for TANF benefits after six months if the individual can document

243 the successful completion of a substance abuse treatment program offered by a provider
 244 approved by the department. ~~An individual who has met the requirements of this~~
 245 ~~subsection and reapplies for TANF benefits shall also pass an initial drug test and meet the~~
 246 ~~requirements of subsection (c) of this Code section. Any drug test conducted while the~~
 247 ~~individual is undergoing substance abuse treatment shall meet the requirements of~~
 248 ~~subsection (b) of this Code section.~~ The cost of any drug testing provided under this Code
 249 section and substance abuse treatment shall be the responsibility of the individual being
 250 tested and receiving treatment. An individual who fails the drug test required under
 251 subsection (c) of this Code section may reapply for TANF benefits under this subsection
 252 only once.

253 (g) If a parent is deemed ineligible for TANF benefits as a result of failing a drug test
 254 conducted under this Code section:

255 (1) The dependent child's eligibility for TANF benefits shall not be affected;

256 (2) An appropriate protective payee shall be designated to receive benefits on behalf of
 257 the child; and

258 (3) The parent may choose to designate another individual to receive benefits for the
 259 parent's minor child. The designated individual must be an immediate family member
 260 or, if an immediate family member is not available or the family member declines the
 261 option, another individual approved by the department. The designated individual shall
 262 ~~also undergo~~ be subject to possible drug testing based on a reasonable suspicion before
 263 ~~being approved to receive benefits on behalf of the child.~~ If the designated individual
 264 tests positive for controlled substances, he or she shall be ineligible to receive benefits
 265 on behalf of the child.

266 (h) The results of any drug test done according to this Code section shall not be subject to
 267 disclosure under Article 4 of Chapter 18 of Title 50, relating to inspection of public
 268 records. Such results shall not be used as a part of a criminal investigation or criminal
 269 prosecution. Such results shall not be used in a civil action or otherwise disclosed to any
 270 person or entity without the express written consent of the person tested or his or her heirs
 271 or legal representative. All such records shall be destroyed and deleted five years after the
 272 date of the test.

273 (i) No testing shall be required by the provisions of this Code section for any person whom
 274 the department determines is significantly hindered, because of a physical or mental
 275 handicap or developmental disability, from doing so or for any person enrolled in an
 276 enhanced primary care case management program operated by the Department of
 277 Community Health, Division of Medical Assistance to serve frail elderly and disabled
 278 beneficiaries to improve the health outcomes of persons with chronic health conditions by
 279 linking primary medical care with home and community based services. In addition, no

280 testing shall be required by the provisions of this Code section for any individuals receiving
281 or on a waiting list for long-term services and supports through a non-Medicaid home and
282 community based services program or for any individual residing in a facility such as a
283 nursing home, personal care home, assisted living community, intermediate care facility
284 for the mentally retarded, community living arrangement, or host home.
285 (j) The department shall adopt rules to implement this Code section."

286 **SECTION 3.**

287 All laws and parts of laws in conflict with this Act are repealed.