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Legislative Document

No. 1407

H.P. 955

House of Representatives, May 12, 2015

**An Act To Require Screening and Testing for Illegal Substances of
Beneficiaries under the Temporary Assistance for Needy Families
Program**

Reference to the Committee on Health and Human Services suggested and ordered printed.

A handwritten signature in cursive script that reads "Robert B. Hunt".

ROBERT B. HUNT
Clerk

Presented by Representative SANDERSON of Chelsea. (GOVERNOR'S BILL)
Cosponsored by Senator McCORMICK of Kennebec.

1 **Be it enacted by the People of the State of Maine as follows:**

2 **Sec. 1. 22 MRSA §3104, sub-§14**, as amended by PL 2009, c. 291, §2, is
3 repealed.

4 **Sec. 2. 22 MRSA §3762, sub-§1, ¶¶B-2, B-3 and D-1** are enacted to read:

5 B-2. "Drug" means a controlled substance as defined in the federal Controlled
6 Substances Act, 21 United States Code, Section 802(6).

7 B-3. "Drug test" means a chemical test administered to determine the presence of a
8 drug or a drug's metabolites in a person's body fluids.

9 D-1. "Substance use disorder" means any diagnosable disorder characterized by a
10 cluster of cognitive, behavioral and physiological symptoms indicating that the
11 individual continues to use a substance despite significant substance-related problems
12 that is supported by the most current edition of the Diagnostic and Statistical Manual
13 of Mental Disorders, published by the American Psychiatric Association.

14 **Sec. 3. 22 MRSA §3762, sub-§17**, as enacted by PL 2001, c. 598, §2, is repealed.

15 **Sec. 4. 22 MRSA §3762, sub-§20**, as reallocated by RR 2011, c. 1, §33, is
16 amended to read:

17 **20. Denial of assistance based on positive drug test.** A recipient of TANF
18 assistance may be denied TANF assistance as described in this subsection.

19 ~~A. The department may administer a drug test to a recipient of TANF assistance who~~
20 ~~has been convicted of a drug related felony, as described in Section 115 of~~
21 ~~PRWORA, within 20 years of that person's date of conviction.~~

22 ~~B. If a person under paragraph A tests positive for an illegal drug, the department~~
23 ~~shall notify that person that:~~

24 ~~(1) The person's TANF assistance is subject to termination;~~

25 ~~(2) The person is entitled to a fair hearing regarding the termination of TANF~~
26 ~~assistance; and~~

27 ~~(3) If the person requests a fair hearing, the person shall submit to a 2nd drug test~~
28 ~~to verify the results of the first drug test.~~

29 ~~C. The results of the 2nd drug test must be available prior to the fair hearing, if~~
30 ~~practicable. The person shall cooperate in a timely manner in submitting to the 2nd~~
31 ~~drug test. If the 2nd drug test confirms that the person is using an illegal drug, the~~
32 ~~person may avoid termination of TANF assistance by enrolling in a substance abuse~~
33 ~~treatment program appropriate to the type of illegal drug being used by that person.~~

34 ~~D. If the department determines that, for good cause, a person is unable to enroll in a~~
35 ~~substance abuse program as required by paragraph C, the person remains eligible for~~
36 ~~TANF assistance until such time that the department determines that the person is~~
37 ~~able to enroll in a substance abuse treatment program.~~

1 E. The department shall terminate TANF assistance to a person who fails to request a
2 fair hearing and submit to a 2nd drug test as described in paragraph B or who fails to
3 participate in a substance abuse treatment program as required pursuant to paragraph
4 C or D.

5 F. An adult applicant for or an adult recipient of TANF benefits in the assistance unit
6 who otherwise qualifies for cash assistance under the TANF program is required to
7 complete a written screening questionnaire designed to determine the likelihood of
8 the person's having a substance use disorder.

9 G. If the results of the written screening questionnaire under paragraph F indicate a
10 reasonable likelihood that the adult applicant for or the adult recipient of TANF
11 benefits may have a substance use disorder involving the misuse of a drug, the
12 department shall require the person to submit to a drug test at the department's
13 expense in order to continue to receive cash assistance under the TANF program.

14 H. If a person refuses to take the drug test required pursuant to paragraph G, the
15 department shall terminate cash assistance for the person and the person may not
16 reapply for cash assistance for:

17 (1) Ninety days after the first refusal to take a drug test within a one-year period;
18 and

19 (2) One year after the 2nd refusal to take a drug test within a one-year period.

20 I. A drug test under paragraph G must be administered with due regard to the privacy
21 and dignity of the person being tested.

22 J. Before taking a drug test pursuant to paragraph G, the person may advise the
23 person administering the test of any prescription or over-the-counter medication the
24 person is taking.

25 K. The result of a drug test under paragraph G is not a public record under Title 1,
26 chapter 13, subchapter 1 and disclosure to a 3rd party is prohibited.

27 L. If an adult applicant for or an adult recipient of TANF benefits tests negative for
28 the unlawful use of a drug, the person remains eligible for cash assistance, subject to
29 other TANF eligibility requirements.

30 M. If an adult applicant for or an adult recipient of TANF benefits tests positive for
31 the unlawful use of a drug, the person:

32 (1) Must be given a list of approved substance use disorder treatment providers
33 that are available in the area in which the person resides; and

34 (2) May receive or continue to receive TANF benefits if the person enters into
35 and follows the requirements of a substance use disorder treatment plan,
36 including:

37 (a) Receiving treatment from an approved substance use disorder treatment
38 provider for at least 90 days;

39 (b) Testing negative for the unlawful use of a drug;

1 (i) In each drug test required by the department by rule during treatment;
2 and

3 (ii) In a drug test to be given at the conclusion of treatment; and

4 (c) Meeting the other TANF requirements for receiving cash assistance.

5 N. If an adult applicant for or an adult recipient of TANF benefits declines to enter
6 into a substance use disorder treatment plan pursuant to paragraph M or if the person
7 enters into but fails to meet a requirement of a substance use disorder treatment plan,
8 including the person's refusal to take a drug test required by a substance use disorder
9 treatment plan, or if the person tests positive for the unlawful use of a drug in a drug
10 test required by a substance use disorder treatment plan, the department may not
11 provide or shall terminate cash assistance for the person, and the person may not
12 reapply for cash assistance for:

13 (1) Ninety days after the day on which the department determines that the person
14 is not or is no longer eligible for cash assistance;

15 (2) One year after the day on which the department determines that the person is
16 not or is no longer eligible for cash assistance if the department had previously
17 determined on one occasion in the past year that the person was not or was no
18 longer eligible for cash assistance pursuant to this subsection; or

19 (3) Ten years after the day on which the department determines that the person is
20 not or is no longer eligible for cash assistance if the department had previously
21 determined on at least 2 other occasions in the past 5 years that the person was
22 not or was no longer eligible for cash assistance pursuant to this subsection.

23 ~~The department shall adopt routine technical rules, as defined in Title 5, chapter 375,~~
24 ~~subchapter 2 A, to implement the provisions of this subsection, including determining~~
25 ~~what constitutes "good cause" under paragraph D.~~

26 **SUMMARY**

27 This bill requires an adult applicant for or an adult recipient of benefits under the
28 Temporary Assistance for Needy Families, or TANF, program to be screened and
29 possibly physically tested for the unlawful use of drugs. The outcome of testing may
30 result in that person's being denied or losing TANF benefits if subsequent substance use
31 disorder treatment is not successfully completed. The bill also repeals provisions that
32 prohibit the State's denying food assistance and TANF assistance to a person who has
33 been convicted of a drug-related felony.