



# OLR RESEARCH REPORT

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## **PUBLIC ASSISTANCE RECIPIENTS—DRUG TESTING AND REDETERMINATIONS**

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You asked if other states require random drug tests for “state assistance” recipients. You also wanted to know whether the Department of Social Services (DSS) periodically checks the financial circumstances of such recipients to ensure that they still meet a particular program’s eligibility criteria.

For purposes of this report, we define state assistance recipients in Connecticut as individuals receiving Temporary Family Assistance (TFA), Medicaid, Supplemental Nutritional Assistance Program (SNAP), or State-Administered General Assistance (SAGA) benefits.

### **SUMMARY**

Michigan was the first state to pass a law imposing mandatory drug testing of welfare recipients but that law was struck down in 2003 as an unconstitutional search and seizure. In 2011, Florida and Missouri passed laws that require their state welfare agencies to perform drug tests on their family cash assistance applicants and recipients. Many other states, including Connecticut, proposed similar legislation that did not pass. The Connecticut bill would have required periodic testing.

Mandatory drug testing laws have been subject to constitutional scrutiny on the basis that they infringe on someone’s right to privacy and freedom from unreasonable searches and seizures. A federal court ruled in 2003 that a Michigan law requiring suspicion-less drug testing of

welfare recipients was unconstitutional and since then, no state has enacted such a requirement. Based on this precedent, Missouri's new law would probably be better able to withstand a constitutional challenge.

State law requires DSS periodically to redetermine someone's eligibility for its assistance programs. For the federal-state programs, these redeterminations generally must be done every 12 months. But elderly and disabled individuals receiving SNAP benefits have their benefits redetermined every 24 months. SAGA recipients must have their eligibility redetermined every 12 months. In addition to annual eligibility redeterminations, individuals must report changes in their circumstances that occur within an eligibility period that could affect whether they are still eligible (e.g., change in income).

## **DRUG TESTING OF WELFARE APPLICANTS AND RECIPIENTS**

Over the years, many state legislatures have considered mandatory drug testing of public assistance recipients. In 2011 alone, at least 30 states considered bills requiring testing, according to the National Conference of State Legislatures, and Florida and Missouri enacted such laws. Florida's bill, [HB 353](#), requires all applicants for the state's cash welfare program to have a drug test as a condition of eligibility. Those testing positive are disqualified from receiving assistance for one year. In Missouri, things are a bit more complicated. There, when a public assistance caseworker believes that a cash assistance recipient is using drugs, the caseworker must report suspected abuse of the child in the household, which then prompts a mandatory drug test. Individuals who refuse to be tested and those who take the test, fail it, and refuse treatment, lose their benefits for two years. Florida's governor has signed that bill into law; in Missouri, the governor has another week to veto the bill or it becomes law.

A 2011 proposed Connecticut bill would have required periodic testing of adults receiving "state cash assistance" (this would appear to include TFA, SAGA, and State Supplement). Recipients testing positive would have two chances to become clean before losing their assistance. The bill was never raised.

### ***States with Drug Testing Laws***

**Florida.** Earlier this year Florida's legislature passed HB 353, which requires the state's welfare agency to perform drug tests on Temporary Cash Assistance adult applicants as a condition of eligibility for benefits. Applicants who test positive cannot receive assistance for one year. If

they re-apply after the year and test positive again, they are ineligible for three years. The applicant must pay for the test.

To protect the dependent children in these families, the Department of Children and Families (DCF) can designate a “protective payee” to receive cash assistance (just the amount to cover the children’s needs) on the children’s behalf. Alternatively, the parent can choose an immediate family member to do this, who must also be tested for drugs.

The bill requires DCF to provide individuals who test positive for controlled substances information about drug abuse treatment programs in the area where they live. The bill specifies that the state is not responsible for providing or paying for such treatment.

**Missouri.** Missouri passed a drug testing law earlier this year. The bill’s stated purpose is to protect the children in the home of or belonging to Temporary Assistance for Needy Families (TANF) recipients and to prevent abuse of taxpayer funds by taking steps to ensure that TANF recipients are not abusing drugs and alcohol.

The bill permits the eligibility caseworker, when conducting the initial TANF eligibility assessments and redeterminations, to report suspected child abuse when he or she believes the TANF applicant or recipient is illegally using a controlled substance. But it requires caseworkers to report suspected abuse when a work-eligible TANF recipient (1) tests positive for illegal drug use in relation to a required work activity or (2) refuses to be tested for drug use in relation to any work activity preparation or the activity itself.

The bill requires a work-eligible recipient (one otherwise eligible for TANF benefits and required to participate in a work activity as a condition of receiving benefits) to be tested for drug use if a child abuse investigation prompted by the above reports gives rise to a reasonable suspicion that the recipient is using drugs.

Recipients refusing to be tested are declared ineligible for TANF for two years from an administrative hearing (unless they successfully appeals the decision to deny). Recipients who test positive lose their benefits for two years from the hearing date unless (1) they enter and successfully complete a substance abuse treatment program administered by the Department of Mental Health’s Division of Alcohol and Drug Abuse and (2) do not test positive for illegal drug use in the six-month period beginning on the date they enter treatment. Recipients continue to receive benefits while in treatment.

After the six-month period, the department can perform random tests. A recipient who tests positive again is declared ineligible for TANF for two years from the next hearing on a decision to deny.

Other members of the household continue to receive their share of the TANF payment either as a “protective or vendor” payment to a third party.

### ***Connecticut’s Proposed Bill***

Proposed bill [395](#) would have required periodic drug testing of adults receiving state cash assistance. For a first positive test for illegal drugs, the individual would have to undergo an evaluation for drug dependence by a health care provider and if the provider recommended such, complete a drug education or treatment program.

Recipients testing positive a second time would be required to complete a drug education or treatment program. Recipients who either failed to complete the treatment program or tested positive a third time would lose their cash assistance.

The bill, which was referred to the Human Services Committee, was never raised.

### **CONSTITUTIONALITY OF DRUG TESTING**

In 1999, Michigan enacted a pilot program for suspicion-less drug testing of all family assistance recipients with the intent of making it statewide. Welfare recipients challenged the law in federal court and the court found that it violated an individual’s right to privacy under the 4<sup>th</sup> Amendment, ruling specifically that it was unconstitutional when applied universally or randomly without reasonable suspicion of drug use (*Marchwinski v. Howard*, 113 F. Supp. 2d 1134 (E.D. Mich. 2000), aff’d 60 F. App’x 601 (6<sup>th</sup> Cir. 2003)).

Despite this ruling, according to an [analysis](#) of the Florida law by Florida House of Representatives staff, the U.S. Supreme Court has ruled in four situations that suspicion-less drug testing is constitutional and does not violate the 4<sup>th</sup> Amendment, which protects an individual’s right against unreasonable searches and seizures. However, none of the rulings pertained to welfare recipients. In these cases, the analysis states, the court focused on the special need of the government, the unique situation involved (e.g., school setting) and public safety.

When public safety was not at risk, the Court ruled differently. It found unconstitutional a Georgia law that required all candidates for designated state offices to certify that they had taken a drug test and the result was negative in order to run for office, according to the analysis (FL. House of Representatives Staff Analysis of HB 353, 2011).

Of the two new drug testing laws, it would appear that Missouri’s would stand a better chance of withstanding a constitutional challenge as it would apply only when a suspicion of drug abuse exists. Florida’s law requires suspicion-less testing.

**REDETERMINATIONS OF ELIGIBILITY**

***General Redeterminations***

State law requires DSS to reinvestigate all cases of people receiving “aid from the state” at least once every 12 months, but it allows for biennial reinvestigations for recipients of “assistance” to the elderly and disabled with stable circumstances (CGS Sec. 17b-104). Although the law allows biennial redeterminations, federal law requires that Medicaid and State Supplement eligibility be redetermined annually and DSS continues to use this schedule for those programs. DSS received a waiver of federal SNAP rules to allow for 24-month redeterminations for elderly recipients and those with disabilities who have stable circumstances.

Although annual redeterminations are generally the norm for these programs, there is some variation. State regulations specify maximum intervals between redeterminations. DSS attempts to assign the longest period between eligibility reviews as possible, and the cycles can be varied for specific cases or target groups on the basis of such factors as error-prone profiles or individual case history.

Table 1 lists maximum intervals for State Supplement, Medicaid, SNAP, and SAGA. Table 2 shows this information for TFA, which is a bit more complex.

**Table 1: Maximum Redetermination Cycles for DSS Assistance Programs**

<b><i>Assistance Program</i></b>	<b><i>Maximum Inteval</i></b>
State Supplement—cases with earnings	At least once every six months
State Supplement—no earnings	At least once every 12 months
Medicaid (except spend down)	At least once every 12 months

<b>Assistance Program</b>	<b>Maximum Interval</b>
Medicaid—spend down	At least once every six months (corresponds to the six month excess income spend-down period)
SNAP (non-elderly and -disabled)	At least once every 12 months
SAGA	At least once every 12 months

Source: DSS Uniform Policy manual, various sections

**TFA Intervals.** TFA has four types of redeterminations. When two become due in the same month, DSS consolidates them into one. In all instances, DSS terminates the benefits when families fail to complete these reviews without good cause.

**Table 2: Maximum Intervals for TFA Recipients**

<b>TFA—Type of Review</b>	<b>Maximum Interval</b>
Counter review	Every six months for time- limited assistance units (AU)(i.e., families) when the unit has received benefits for six months and at least one mandatory employment services Jobs First Employment Services (JFES) participant in the unit (1) is not taking part in a structured employment services activity as specified in his or her employment plan and (2) is not working.
Periodic income review	Every six months based on the number of months someone has received TFA, regardless of whether the AU is time-limited. These are done to (1) gather information about the AU, (2) emphasize the importance of work, (3) update the case file, and (4) make any necessary eligibility changes.
Annual redetermination	Every 12 months for time-limited and exempt families. Purposes are same as those for periodic review.
Exit interview	During the 20 <sup>th</sup> month of time-limited AU or in the fifth month of a six-month extension. These are performed to tell families (1) what benefits they may qualify for once their TFA benefits cease and (2) that they may qualify for an extension.

Source: DSS Uniform Policy Manual, Sec. 8520, et. seq.

### **Interim Activity**

State law requires anyone receiving assistance from these programs, or their legally liable relative, to notify the DSS commissioner, in writing,

within 10 days after learning of or receiving property, wages, income, or resources of any kind. Any change in the information a client furnishes on an application or redetermination form must likewise be reported, either orally or in writing, within 10 days of the change. The requirement can be waived for good cause, which generally arises when circumstances beyond a client's control prevent him or her from complying (CGS § 17b-85).

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