

The Governor approved this Statement of Scope on September 8, 2015.

STATEMENT OF SCOPE
DEPARTMENT OF HEALTH SERVICES

Rule No.: DHS 38

Relating to: Drug Testing for Participants in the FoodShare Employment and Training Program who are Able-Bodied Adults

Rule Type: Permanent Rule

Type of Statement of Scope: Original

1. Finding/nature of emergency (Emergency Rule only):

Not applicable.

2. Detailed description of the objective of the proposed rule:

Wis. Stat. 49.79(9)(d) directs the Department to develop and implement a drug screening, testing, and treatment policy to screen and, if indicated, test and treat participants in an employment and training program within the state's FoodShare program who are able-bodied adults for use of a controlled substance without a valid prescription for the controlled substance. The Department is required to promulgate rules to develop and implement the policy.

This process will ensure that able-bodied adults without dependents who are receiving taxpayer supported workforce training services are drug free. It will also provide individuals who do test positive for an illegal substance a path to treatment.

3. Description of the existing policies relevant to the rule, new policies proposed to be included in the rule, and an analysis of policy alternatives:

Currently able-bodied adults without an exemption must comply with a work requirement to remain eligible for continued FoodShare benefits. One of the ways to satisfy the work requirement is to participate in the FoodShare employment and training program (FSET). 2015 Wisconsin Act 55 enacted this new policy for this specific population participating in FSET. The rule will develop the procedures and content of a screening, testing and treatment program including establishing the persons to be screened and the criteria for the drug testing and treatment following screening of these participants, the process for re-testing of participants in treatment and the payment of treatment and other costs.

As this is a statutory mandate, no alternatives are being considered.

4. Detailed explanation of statutory authority for the rule (including the statutory citation and language):

The rule will be promulgated under the authority of Wis. Stat. 49.79(9)(d) enacted by 2015 Wisconsin Act 55. It reads:

49.79 (9) (d) 1. The department shall promulgate rules to develop and implement a drug screening, testing, and treatment policy to screen and, if indicated, test and treat participants in an employment and training program under this subsection who are able-bodied adults for use of a controlled substance without a valid prescription for the controlled substance. The policy shall include at least all of the following elements:

b. If a participant tests negative for use of a controlled substance, or tests positive for the use of a controlled substance but presents evidence satisfactory to the department that the individual possesses a valid prescription for each controlled substance for which the individual tests positive, the individual will have satisfactorily completed the substance abuse testing requirements under this paragraph.

c. If a participant tests positive for use of a controlled substance for which he or she does not have a valid prescription, then the individual must participate in substance abuse treatment to remain eligible for the employment and training program.

d. While participating in treatment, an individual who has tested positive for the use of a controlled substance without a valid prescription for the controlled substance shall submit to random testing for the use of a controlled substance, and the test results must be negative, or positive with evidence of a valid prescription, in order for the individual to remain eligible for the employment and training program under this subsection. If a test result is positive and the individual does not have a valid prescription for the controlled substance for which the individual tests positive, the individual may begin treatment again one time and will remain eligible for the employment and training program. If the individual completes treatment and tests negative for use of a controlled substance, or tests positive for the use of a controlled substance but presents evidence satisfactory to the department that the individual possesses a valid prescription for each controlled substance for which the individual tests positive, the individual will have satisfactorily completed the substance abuse screening and testing requirements under this paragraph.

2. Subject to the promulgation of rules under subd. 1., the department shall screen and, if indicated, test and treat participants in an employment and training program under this subsection who are able-bodied adults for illegal use of a controlled substance without a valid prescription for the controlled substance.

5. Estimate of amount of time that state employees will spend developing the rule and of other resources necessary to develop the rule:

1040 hours

6. List with description of all entities that may be affected by the proposed rule:

Able-bodied adults without dependents who need to meet a requirement for continued FoodShare benefits;
Income maintenance consortia and FSET contracted vendors will be involved in screening and making referrals for testing and treatment;
Entities that do drug testing;
Entities that provide substance abuse treatment; and,
Wisconsin businesses that will benefit by having more individuals ready to be hired and perform work.

7. Summary and preliminary comparison with any existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule:

21 U.S.C. § 862b provides:

Notwithstanding any other provision of law, States shall not be prohibited by the Federal Government from testing welfare recipients for use of controlled substances nor from sanctioning welfare recipients who test positive for use of controlled substances.

The proposed rule will operationalize this federally-authorized testing in Wisconsin.

8. Anticipated economic impact of implementing the rule:

Indeterminate

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