



Missouri Catholic Conference

Catholic Charities of Missouri, LLC



August 14, 2012

Alyson Campbell, Director  
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Re: Proposed Rules concerning Drug Screening/Testing of TANF Applicants  
and Recipients

Dear Ms. Campbell,

The Missouri Catholic Conference and Catholic Charities of Missouri submit the following comments to Proposed Rules numbered 13 CSR 40-2.400 through 13 CSR 40-2.450 published in the Missouri Register. These rules were drafted to comply with the requirements of House Bills 74 & 47, passed by the Missouri General Assembly during the 2011 legislative session.

The Missouri Catholic Conference and Missouri Catholic Charities agencies testified in opposition to House Bills 74 & 47 when they were being considered by the General Assembly in 2011. The presupposition of this legislation is that indigent Missouri citizens who apply for and receive temporary welfare benefits are more apt to use illicit drugs than other recipients of state aid. We are not convinced there is sufficient evidence to sustain this supposition and believe it is flawed and discriminatory.

Catholic Charities and other Catholic social service organizations are dedicated to providing assistance to Missouri's poor and marginalized citizens. Many of the clients they serve struggle with physical and mental disabilities that prevent them from leading normal lives, and make breaking the cycle of poverty even more challenging. Adding another hurdle for them to receive temporary financial assistance is just one more assault on their dignity as human beings.

If Missouri insists upon testing suspicious TANF applicants and recipients for illegal drug use, we respectfully request that the Department of Social Services do all they can to ensure that the rules reflect “due process” and respect the basic dignity of those who apply for and receive these benefits. To that end, we raise the following concerns regarding the proposed rules and regulations:

13 CSR 40-2.400 – Definitions:

13 CSR 40-2.400(2): The proposed definition of “Appropriate substance abuse treatment program” is very narrow. CSTAR programs presently do not have sufficient space to accommodate all of the persons in need of treatment. There are other programs that provide treatment for addiction that could offer help to those in need of services if this definition were expanded. Limiting treatment options poses a hardship for low-income people.

13 CSR 40.400(4): Based upon this definition, and the rest of the regulations, it is unclear whether a person on a waiting list to obtain treatment would be considered to have “entered” into a treatment program. Applicants or recipients on a waiting list should not be denied benefits and the regulations should reflect this.

13 CSR 40.400(8): An arrest for a drug offense would be considered grounds for testing. If an indigent person lives in a home with a drug offender and in is the wrong place at the wrong time, they could get arrested even though they have no proclivity for drug use. Requiring testing based only on arrest presupposes guilt in conflict with the foundation of our legal system that one is innocent until proven guilty.

13 CSR 40.400(15): The proposed definition of “Treatment provider” is very narrow. CSTAR programs presently do not have sufficient space to accommodate all of the persons in need of treatment. There are other programs that provide treatment for addiction that could offer help to those in need of services if this definition were expanded. Limiting treatment options poses a hardship for low-income people.

13 CSR 40-2.410 – Screening Applicants for Illegal Drug Use:

13 CSR 40.410(1): The rules should identify specifically the screening tool that will be used. Moreover, the selection of the screening tool should take into consideration the applicant/recipient’s ability to comprehend, and should be simple enough so that barriers such as literacy, language differences and mental health challenges do not constitute failure to “cooperate”.

13 CSR 40.410(C)(1): The proposed rules state that no benefits may be conferred upon those who “fail to cooperate” in the screening process. The proposal does not address those who are unable to cooperate because of mental illness, literacy challenges, or other issues such as language barriers. We request that the term “fails to cooperate” be defined such that it does not include those who are unable to cooperate due to mental illness or other disability.

13 CSR 40.410(3): The proposed rule states that the application or receipt of benefits constitutes “consent” to obtain “all relevant information” to determine if individual engages in illegal use of controlled substance. The proposed rule does not define “all relevant information.” Because consent is presupposed upon application, fairness requires a person have notice of what information he/she is consenting to release. Furthermore, if an applicant chooses to accept having a protective payee in place in lieu of testing, etc. there is no need for a broad authorization releasing ‘protected health information’, for example. Such a broad consent provision goes beyond the requirements of the legislation.

General Comment regarding screening: At a hearing, a suspected drug user can assert an affirmative defense that they have a medical condition that prevents them from “submitting a sample for testing... or from completing an appropriate substance abuse treatment program.” The regulation should provide an “affirmative defense” prior to hearing, so that a person with a mental health issue, or a person that is taking medication they know will lead to a positive test can show evidence of that without the need for testing and a hearing. It would seem this would save time and money for the state.

### 13 CSR 40-2.420 – Testing for Illegal Drug Use:

13 CSR 40.420(1)(C): This proposed rule provides that drug testing will be in the county of residence of the applicant/recipient. In larger counties, this could present a transportation problem. Will transportation be available for those who must submit to testing? If not, the regulation should contain alternatives or excuse from testing those to whom this presents a barrier.

13 CSR 40.420(D): This proposed rule requires verification of identity: many indigent clients don’t have the forms of identification listed in the regulations. The Division should provide assistance with obtaining proper identification, or provide alternative means of showing proof of identity to make this requirement attainable for those of limited means.

13 CSR 40.420(2): This proposed rule again states that no benefits will be provided for those who fail to cooperate. We request that the term “fails to cooperate” be defined such that it does not include those who are unable to cooperate due to mental illness or other disability.

General concern regarding testing: There is no mention in the testing regulations about confirmation tests. Applicants and recipients claiming false positive test results should be able to request confirmation tests from the labs responsible for the test results to challenge presumptive “false positive” test results and the regulation should include this provision.

#### 13 CSR 40-2.430 – Substance Abuse Treatment Program:

13 CSR 40-430(1): Referral to “appropriate substance abuse treatment ” excludes non-CSTAR programs that could provide treatment if this definition were expanded.

13 CSR 40-430(3): The proposed rule should reflect that those referred for treatment, but not able to enroll because of lack of available spots be considered “actively participating” and be able to receive benefits while they wait to enroll.

#### 13 CSR 40-2.440 – Hearing for Proceedings:

13 CSR 40-2.440(F)(ii): The term “medical condition” should include mental illness, and this should be clear. We suggest the rule read, “The individual has a physical or mental health condition that prevented...”

13 CSR 40-2.440(G)(i): This proposed regulation suggests that any medical record in the possession of the family support division (even those created by third parties) would be admissible without any authentication. These documents would otherwise be hearsay. Authentication by affidavit, at a minimum, should accompany these records, and those accused of failing a drug test should be provided copies of any documents expected to be introduced into evidence at least seven days prior to any hearing as required by §490.692.2 RSMo to provide due process and basic fairness. These documents should be subject to the requirement that they be accompanied by an affidavit, as is required under subsection 40.440(G)(ii).

13 CSR 40-2.440(G)(ii): The family support division should provide to the accused copies of any documents to be introduced into evidence at a hearing at least seven days prior to the hearing as required by §490.692.2 RSMo to provide due process and basic fairness.

#### 13 CSR 40-2.450 – Assignment of Protective Payee over Benefits:

13 CSR 40-2.450: The statement that the TANF benefits “shall not be given or used in *any way* to benefit the ineligible individual” is problematic. This proposed regulation suggests that the ineligible individual can no longer live in his/her home if TANF funds were used for rent, or can’t eat a meal purchased for the family with TANF funds. This is another example of the proposed regulations

going beyond the requirements of the legislation, and the terms “in any way” should be removed from the regulation.

We thank you for the opportunity to comment on these rules and regulations, and would be happy to further discuss any of these concerns with you.

Sincerely,

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CC: Joint Committee on Administrative Rules