

No.00-2115

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

TANYA L. MARCHWINSKI; TERRY J. KONIECZNY;
WESTSIDE MOTHERS,
on behalf of all similarly situated persons,

Plaintiffs-Appellees,

v.

DOUGLAS E. HOWARD, in his official capacity as
Director of the Family Independence Agency of Michigan,

Defendant-Appellant

**BRIEF AS *AMICI CURIAE* IN SUPPORT
OF THE APPELLEES
SUBMITTED BY**

AMERICAN PUBLIC HEALTH ASS'N, NATIONAL ASS'N OF
SOCIAL WORKERS, INC., NATIONAL ASS'N OF
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LAW CENTER, JUVENILE LAW CENTER, NATIONAL COALITION
FOR CHILD PROTECTION REFORM

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I. INTERESTS OF THE AMICI CURIAE

Amici curiae are professional organizations representing the leading practitioners and researchers in the areas of social work, alcohol and substance abuse treatment, women's health, and public benefits. *Amici* are committed to combating alcohol and drug abuse and the attendant harms they cause through the responsible intervention and collaboration of public health, medicine and social services. Many members of the *amici* organizations provide social and/or health services to poor individuals and families, including those struggling with substance abuse. *Amici*, therefore, are well-situated to provide this court with critical insight into why the suspicionless drug testing of persons seeking or receiving public assistance is fundamentally flawed not simply as a matter of constitutional law but also as a matter of public policy.¹

II. STATEMENT OF FACTS

Amici incorporate the statement of the case and statement of facts from Appellee's Brief on the Merits.

III. INTRODUCTION

Michigan stands alone among the states in attempting to implement a mandatory program of drug testing applicants for welfare benefits, their adult family members, and current welfare recipients absent any individualized

¹ Descriptions of *amici curiae* are set forth in Appendix A to this brief.

suspicion of wrongdoing. Michigan asserts that its policy of suspicionless drug testing of will “assist adult recipients in finding and maintaining permanent employment, in making welfare a temporary experience, and in strengthening families.” Appellant’s Opening Brief at 6. These goals, while laudable, do not give rise to concerns for public safety that are sufficiently weighty to bypass the Fourth Amendment’s individualized suspicion requirement. Nor are these goals adequately addressed by the universal drug testing policy designed by Michigan. In fact, Michigan’s policy is *counterproductive* to its stated goals.

As explained below, Michigan’s policy does not rest on sound epidemiological data, is not based on proven strategies, fails to advance the purported goals of the program, and, in fact, will likely undermine its stated interest in promoting employability and family stability. Michigan cannot credibly claim that its policy of searching peoples’ urine absent individualized suspicion constitutes a reasonable and appropriately tailored response to the problem it is seeking to remedy. Michigan’s scheme of suspicionless urine testing of applicants and recipients fails to distinguish between drug use and drug abuse or drug impairment and levels of impairment. Nor does the program screen for alcohol, *the primary substance of abuse* in America. Simply put, the fact that a urine sample tests positive for drugs does not mean that the person who provided the

sample was drug dependent, was a drug abuser, is drug impaired, or is in any way unfit to raise a family or hold a job.

Perhaps most disturbingly, Michigan's drug testing scheme, far from identifying drug-impaired poor persons and channeling them into treatment, is likely to *deter* such individuals – particularly parents of minor children – from seeking critical public benefits for fear that their substance abuse will result in state sanctions, including loss of both public benefits and the custody of their children. The likely deterrent effect of the testing policy will deprive needy families of essential supports, with disastrous consequences.

Amici do not take issue with the motives that gave rise to Michigan's policy. But even the most ardent concern for the well-being of others cannot in-and-of-itself constitute a "special need" that excuses the searching of peoples' urine absent constitutional safeguards. For the reasons more fully explained below, *amici* urge this Court to reject Michigan's argument that its drug testing policy is permitted under the "special needs" exception to the Fourth Amendment and to uphold the preliminary injunction entered below.

IV. ARGUMENT

The Fourth Amendment of the U.S. Constitution protects “the right of the people to be secure in their persons . . . against unreasonable searches and seizures.” The parties do not dispute that the collection and analysis of bodily fluids by Michigan pursuant to its welfare drug testing policy is a search within the meaning of the Fourth Amendment. At issue, rather, is whether it is proper to side-step the general requirement that such an intrusion be preceded by individualized suspicion by virtue of the very limited “special needs” exception to the Fourth Amendment.

In assessing whether the special needs exception to the Fourth Amendment applies, courts look first to whether there is some heightened threat to, or an “immediate crisis” implicating public health or safety that necessitates a governmental response circumventing the privacy protections embodied in the Constitution. *See City of Indianapolis v. Edmond*, 121 S.Ct. 447, 455 (2000) (noting that “exigencies” and “emergency” situations sometimes can justify “a regime of suspicionless searches or seizures”); *Chandler v. Miller*, 520 U.S. 305, at 323 (1997) (holding that where “public safety is not genuinely in jeopardy, the Fourth Amendment precludes the suspicionless search, no matter how conveniently arrayed.”). Similarly, the court must determine that there is an “obvious connection” between the special need and the means chosen by the state

to address that need. *See Edmond*, 121 S.Ct. at 453 (2000). *See also Chandler*, 520 U.S. at 320 (drug testing scheme must be a “well designed, . . . credible means” of addressing State’s special need).

The court must then balance the asserted special need against the constitutional interest of persons in maintaining their personal privacy and bodily integrity against the prying eyes of government. Specifically, the court must assess whether the special need is “substantial” or “important enough to override the individual’s acknowledged privacy interest [and] sufficiently vital to suppress the Fourth Amendment’s normal requirement of individualized suspicion.” *Chandler*, 520 U.S. at 318. *See also National Treasury Employees Union v. Von Raab*, 489 U.S. 656, 673-75 (1989).

Michigan’s drug testing policy fails the special needs analysis at each juncture. As *amici curiae* make clear below, the threat to public health or safety is not sufficient to trigger a state policy that singles out public assistance applicants and recipients and subjects them to diminished constitutional protections by mandatory suspicionless drug testing. The District Court was thus correct to end its inquiry by finding that no special need exists to justify Michigan’s policy.

Even assuming *arguendo* that the state could assert a public safety justification for targeting poor people for suspicionless searches, Michigan’s drug testing scheme fails to achieve the State’s goals of promoting employment and

strengthening families and thus cannot constitute a reasonable search under the Fourth Amendment. In fact, Michigan's policy is likely to deter impoverished persons – particularly needy pregnant and parenting women – from accessing public benefits, and is thereby *counterproductive* to its avowed goals.

A. There is no “special need” to protect public safety that justifies Michigan’s circumvention of Fourth Amendment protections.

Michigan's policy rests on the assertion that the type or scope of drug use by people receiving public assistance presents a significant threat to public health and safety that cannot be adequately addressed – by law enforcement, social services, state medical providers, or other government actors – without circumventing the privacy safeguards afforded by the Constitution. Although this assumption may be consistent with certain sensationalized media accounts of drug abuse, it lacks support in empirical data.

It is important that the constitutionality of a policy like the one at issue here be assessed against the backdrop of reliable data so that the policy can accurately be said to respond to a real and pressing social need. *Amici* share Michigan's desire to reduce the negative effects of alcohol and drug abuse on people's lives. Moreover, *amici*, members of whom are on the front lines of combating substance abuse wherever it occurs, have no reason to downplay the devastating consequences that substance dependence can cause individuals, families and their communities. Indeed, it is by virtue of their depth of experience and commitment

to research that *amici* adamantly reject Michigan's assertion – unique among the 50 states – that the rate and severity of substance abuse among welfare applicants and recipients justifies mandatory suspicionless drug testing of this population.

Although Michigan casually characterizes substance abuse among its welfare population as “prevalen[t]”, Appellant Brief, at 8, the State is unable to show that substance abuse by this population presents a substantial and real risk to public safety sufficient to engender a special need. In fact, one year *before* Michigan began drug testing welfare applicants and recipients, a comprehensive article examining substance abuse within this population published in a leading peer-reviewed scientific health journal, concluded that “the recent spate of welfare reform legislation [like Michigan's program] targeted at substance abusing recipients relies on a weak base of data and research regarding the overall burden of alcohol and drug problems on the welfare system, particularly the relationships between problems of substance abuse and welfare dependency.” Laura Schmidt *et al.*, *Substance Abuse and the Course of Welfare Dependency*, 88 Amer. J. Pub. Health 1616, 1616 (1998) [hereinafter “Schmidt *et al.*, *Substance Abuse*”].

Other studies similarly conclude that welfare recipients are no more likely to have substance abuse problems than members of the general public. *See, e.g.* Bridget Grant and Deborah Dawson, *Alcohol and Drug Use, Abuse and Dependence Among Welfare Recipients*, 86 Amer. J. of Pub. Health 1450 (1996)

(finding rates of alcohol and drug use and abuse among welfare recipients are similar to federally-estimated rates of citizens not receiving public benefits); National Institutes of Health, *National Institute on Alcohol Abuse and Alcoholism Researchers Estimate Alcohol and Drug Use, Abuse and Dependence Amongst Welfare Recipients*, News Release: Oct. 23, 1996 (finding that proportion of welfare recipients using, abusing, or dependent on drugs matches that of general adult population not on welfare); Rukamalie Jayakody *et al.*, *Welfare Reform, Substance Abuse, and Mental Health*, 25 J. Health, Pol., Pol’y & L. 623, 644 (2000) (reviewing results from the 1994 and 1995 National Household Survey of Drug Abuse that fail to show widespread substance abuse among welfare recipients).

In *Vernonia Sch. Dist. 47J v. Acton*, 515 U.S. 646 (1995), the United States Supreme Court permitted suspicionless drug testing of a narrow group of student athletes, where the school district was able to show that these students engaged in a potentially dangerous sport in a “drug infested school” experiencing a “state of rebellion,” and that the crisis was fueled by widespread drug use among these particular athletes. *Vernonia*, 515 U.S. at 649, 662. By stark contrast, as the above studies make clear, *before* Michigan fashioned its scheme to drug test welfare applicants and recipients absent any individualized suspicion of drug use, substantial, persuasive and widely available data undercut the very premise for

targeting this population. *See also* U.S. Department of Health and Human Services, *Patterns of Substance Abuse and Substance-Related Impairment Among Participants in the Aid to Families With Dependent Children Program (AFDC)*, at 23 (1994) (noting that just seven percent of adults ages 18-44 who were significantly impaired by substance abuse were AFDC (now TANF) recipients); Julie Strawn, *Substance Abuse and Welfare Reform Policy*, 1 Welfare Information Network 1 (1997) (www.welfareinfo.org/hardtoplace.htm) (drug abuse impairs only five percent of welfare recipients in their day-to-day functioning).

Research published *after* Michigan implemented its policy further weakens the State's claim of a "special need." *See e.g.*, Nancy Campbell, *Using Women: Gender, Drug Policy, and Social Justice* 27 (2000) (finding by National Institute on Alcohol Abuse and Alcoholism that the percentage of substance abusers among welfare recipients is "virtually identical" to the percentage in the general population); Sheldon Danzinger *et. al.*, *Barriers to the Employment of Welfare Recipients* 14 (2000) (Michigan study finding participants in Family Independence Program ("FIP") – the State's program for administering Temporary Assistance to Needy Families ("TANF") benefits – "no more likely to [be] drug and alcohol dependen[t] than adult women in the general population"). Unlike the student athletes in *Vernonia*, whom the Court characterized as "leaders of [a] drug culture," posing an "immediate crisis" to the safety and well-being of themselves

and others, *Vernonia*, 515 U.S. at 649, 663, Michigan's welfare population, with regard to the rate and severity of substance abuse, is a representative cross-section of America. Put differently, it is simply not true that a disproportionate number of people suffering from substance abuse receive public benefits – this is a problem spread evenly across socio-economic strata, afflicting persons independent of their race, class or gender.

Michigan tries to justify its policy not only by claiming that the welfare population experiences heightened levels of substance abuse, but also by alleging that the members of this population are disproportionately impaired by substance abuse in their ability to find and maintain employment or establish family stability. The data, however, do not support this assertion. To be sure, Michigan invokes various articles in its attempt to portray a substance abuse crisis among Michigan's poor. *See* Appellant Brief, 6-9. But the sources cited by Michigan stand only for the unremarkable (and uncontested) propositions that 1) "a certain percentage of welfare recipients use drugs," a subset of whom are impaired by that drug use, *id.* at 7, and 2) for these individuals, substance abuse is one among several barriers to achieving stable employment and family relationships, *id.* at 6. These facts, alone or in combination, do not establish that welfare recipients are more likely than the general population to be impeded in finding employment or maintaining family stability because of drug use. Indeed, Michigan's acknowledgement that substance

abuse is but one of several barriers confronting welfare clients sharply *undercuts* its claim that substance abuse presents a “special need” that justifies eschewing the Fourth Amendment and subjecting poor people to suspicionless drug testing.

In fact, substance abuse is “*not* a significant determinant of long welfare stays, repeat welfare use, or the total time a person remained on welfare.” Schmidt *et al.*, *Substance Abuse, supra*, at 1620 (emphasis added). Other widely recognized impediments to family and employment stability facing this group include lack of basic skills, childcare and housing; low wages; mental illness (particularly depression); poor general health; and having a child with a chronic medical condition or severe disability. See Krista Olson and La Donna Pavetti, *Personal and Family Challenges to the Successful Transition from Welfare to Work* (1996). See also Margaret Brooks and John Buckner, *Work and Welfare: Job Histories, Barriers to Employment, and Predictors at Work Among Low-Income Single Mothers*, 66 *Am. J. Orthopsychology* 566, 527 (1996).

Grasping for a justification of their policy outside the realm of the welfare statutes and regulations, Michigan then invokes as a “special need” its obligation to protect children against child abuse and neglect. The District Court correctly held that “since TANF generally, and Michigan’s FIP specifically, are not designed to ameliorate child abuse and neglect, the State cannot legitimately advance such abuse or neglect as supporting a special need sufficient to single out FIP recipients

for suspicionless drug testing.” *Marchwinski*, at 1141-1142. But even if the state FIP personnel could somehow show jurisdiction, Michigan fails to demonstrate any connection between substance use among adult welfare recipients and child abuse or neglect. As section III.B.2 below makes clear, a review of the scientific literature belies any claim (or stereotype) that welfare-eligible parents are any more likely to engage in drug-induced incidents of child abuse or neglect than more affluent families, or that the state is in any way justified in diminishing the constitutional rights of poor people in order to address either their substance and/or child abuse.

Michigan’s tenuous justification for its welfare drug testing policy – that combating substance abuse improves family ties and employment opportunities – together with its negligible evidence of a specific crisis of drug abuse afflicting the welfare sector resembles the highly general argument recently rejected by the Supreme Court that searching vehicles absent individualized suspicion of illegal activity in the name of drug interdiction was reasonable under the Fourth Amendment. *Edmond*, 121 S.Ct. 447. It simply cannot be said that Michigan’s policy of drug testing its welfare population “fit[s] within *the closely guarded* category of constitutionally permissible suspicionless searches.” *Chandler*, 520 U.S. at 309 (emphasis added). To hold otherwise would expand the narrow special needs doctrine beyond recognition and invite myriad state breaches of cherished

privacy interests. In fact, if Michigan's drug testing policy were upheld on the ground that it promotes full employment and family stability, the State could justify suspicionless drug testing of virtually the entire adult population of the state.

In sum, since Michigan's justification for its policy is refuted by contemporaneous and reliable data, it cannot possibly fall within the special needs exception, and must be struck down.

B. Michigan's policy is not appropriately tailored to further the State's goals and should be struck down as unreasonable.

Assuming *arguendo* that Michigan could make a case for a special need – namely, that substance abuse among its welfare recipients posed a serious and concrete threat to public health and safety – the policy at issue would still not pass constitutional muster. Michigan's suspicionless urine testing policy is not “well designed to identify” the subset of drug users whose substance abuse impairs their family relationships and employability, thereby failing to serve as a “credible means” to detect and address any negative effects of drug use. *Chandler*, 520 U.S. at 319. *See also Edmond*, 121 S.Ct. at 455. Without this crucial nexus between a special need and the means employed by Michigan to address it, Fourth Amendment reasonableness requirements are not met.

1. Substance abuse or impairment cannot be conflated with substance use, and the use of drug testing fails to detect impairments to employability and family relationships.

Medical, drug treatment, and social services professionals distinguish between simple drug ingestion and problematic drug abuse or dependence, employing generally accepted criteria set forth in the American Psychiatric Association's *Diagnostic and Statistic Manual of Mental Disorders, IV* (1994) ("DSM-IV"). The DSM-IV defines substance "use" as the occasional alcohol, tobacco, or drug use for non-medical purposes, and substance "abuse," as use that leads to social, legal, or interpersonal problems and "dependence or addiction" (used interchangeably). Dependence or addiction, in turn, is described as "uncontrollable" drug use that results in substantial impairment of functioning and health.

Michigan's drug testing policy is fundamentally flawed because it does not distinguish between drug use and drug abuse or impairment. While "universal drug testing would quickly inform states about how many of their welfare clients had recently used drugs, [] it would not provide useful information about how many of them had an alcohol or drug problem that, without treatment, would prevent them from working and taking care of their families." Legal Action Center, *Making Welfare Reform Work: Tools for Confronting Alcohol and Drug Problems Among Welfare Recipients* 31 (1997). The fact that a urine sample tests positive for drugs does not mean that the person who provided the sample was drug dependent, was a drug abuser, is drug impaired, or is unfit to raise a family or

hold a job. Instead, a positive urinalysis, if accurate, simply announces the presence of a drug or its metabolite in the body.² See Nancy Young and Sidney Gardner, *Implementing Welfare Reform: Solutions to the Substance Abuse Problem* 9 (1997).

The distinctions drawn by the DSM-IV are particularly relevant given Michigan's stated goals – to promote strong family relationships and employment. Michigan neither argues nor offers evidence that occasional alcohol or drug use impairs family stability or one's ability to be gainfully employed. As it so happens, 70% of *all* illicit drug users (and presumably a much higher percentage of alcohol users), ages 18-49, are employed full-time. Substance Abuse and Mental Health Services Administration, *Worker Drug Use and Workplace Policies and Programs: Results from the 1994 and 1997 National Household Survey on Drug Abuse* 1 (1999). See also Schmidt *et al.*, *Substance Abuse*, *supra*, at 1620 (finding results that contradict the proposition that substance abuse problems inhibit recipients' prospects for obtaining stable jobs). Although Michigan professes a

² Drug tests commonly report “false-positives.” For example, detecting drugs that were medically prescribed, passively ingested, or are mimicked by drug metabolites produced by commonplace foods such as poppy seeds. Edward Shepard and Thomas Clifton, *Drug Testing Productivity; Estimates Applying a Production Function Model*, Le Moyne Institute of Industrial Relations, Research Paper No. 18 (1998); Jorg Morland *et. al.* *Cannabinoids in Blood and Urine after Passive Inhalation of Cannabis Smoke*, 30 *J. Forensic Sciences* 997 (1985).

desire to root out substance *abuse* among Michigan’s poor, its policy of searching their urine does not, and cannot, distinguish between simple use and problematic abuse. *See e.g., Jayakody et. al., supra*, at 644 (noting “widespread drug testing of welfare recipients will detect many women who have no accompanying problem with impaired social performance or employment”).

2. Michigan’s drug testing lacks sufficient nexus to its stated goal by ignoring alcohol and over-identifying cannabis.

Michigan’s drug testing program is fundamentally flawed for still another reason: it fails to identify *alcohol* use and abuse. As every substance abuse expert knows, alcohol abuse far surpasses the use or abuse of all illicit drugs combined and is the principal cause of drug-related morbidity, impairment and death in the United States, irrespective of class.³ *See e.g., Substance Abuse and Mental Health Services Administration, Summary of Findings from the 1999 National Household Survey on Drug Abuse* Appendix G at Table 8, Table 9, and Table 29 (1999) (alcohol use far exceeds that of all other drugs combined); Grant and Dawson,

³ Indeed, “alcohol abuse forms a prominent part in many if not most drug users’ lives.” Loretta Finnegan and Stephen Kandall, *Maternal and Neonatal Effects of Alcohol and Drugs in Substance Abuse: A Comprehensive Textbook* 529 (Joyce H. Lowinson, *et al.* eds., 1997).

Alcohol and Drug Use, Abuse and Dependence Among Welfare Recipients, supra at 1451-52 (incidence of alcohol abuse/dependence in AFDC recipients is double that of dependence on all other drugs combined). Yet Michigan does not test for alcohol. *See* Appellant's Brief at 11. Assuming *arguendo* that the Michigan's substance abuse problem rises to the level of a special need, Michigan's drug testing policy neglects the foremost drug-related threat to public health and safety.

Instead, Michigan's urine testing scheme is most likely to detect cannabinoids, even though cannabis is far less likely to affect family stability and job performance. *See e.g.*, Lynn Zimmer and John Morgan, *Marijuana Myths, Marijuana Facts: A Review of the Scientific Evidence* 63-68 (1997) (marijuana users are similar to non-users in most employment related measures, including grade-point average, diligence on the job, and earning capacity); *See also* Joyce Lowinson *et al.*, *Substance Abuse: A Comprehensive Textbook*, 3d ed. at 374 (1997). Cannabis is most likely to be detected by urine testing not only because marijuana is the most commonly used illicit drug, but also because marijuana takes far longer than most other drugs to be fully excreted from the bloodstream, tissues and urine.⁴ Zimmer and Morgan, *supra*, at 121-22 (it takes days to weeks for marijuana to be excreted from the body). *See also* Richard Hawks and C. Nora Chiang, "Examples of Specific Drug Assays," in *Urine Testing for Drugs of Abuse*,

NIDA Research Monograph Series 73 (1987). *See generally*, Young and Gardner, *supra*, at 11-12 (Since urinalysis largely identifies low-level marijuana use, New York and Maryland concluded that drug testing welfare recipients is less effective and more costly than other types of assessment).

3. Drug testing does not detect child abuse and neglect.

Michigan erroneously attempts to justify its drug testing policy by averring to its need to protect children from abuse and neglect. *See Marchwinski* at 1141; Appellant's Brief at 28. The District Court held, however, that this goal, though laudable, does not fall within the mandate of the FIP program that administers Michigan's drug testing program. *Marchwinski* at 1141-42. *Amici* wish to note, however, that even if Michigan was empowered to address issues of child welfare, the State's drug testing policy is woefully ill-suited to achieve this separate goal and so does nothing to justify its breach of Fourth Amendment protections.

Michigan's argument boils down to the claim that urine testing somehow detects child abuse and neglect, and that mandatory suspicionless drug testing is therefore a critical tool for combating this scourge. Let it first be said that *amici curiae* yield to no one in their concern for the well-being of children and their understanding of the devastating effects that substance abuse can cause entire

⁴ During the five weeks that Michigan's policy was in effect, 73% of the positive results detected only cannabis. Resp. to Pls' First Interrog., No. 2.

families, and it is for this very reason that it is incumbent upon *amici* to expose the fallacies in Michigan's reasoning.

Michigan's first mistake is to ignore the over-inclusive nature of drug testing. As pointed out above, a positive urine screen cannot be equated with problematic drug use. A multitude of data shows that parental drug use, across economic strata, is not a reflection of parenting abilities or commitment. *See, e.g.,* Susan Boyd, *Mothers and Illicit Drugs: Transcending the Myths* 14-15 (1999); Lynn Paltrow *et al.*, *Year 2000 Overview: Governmental Responses to Pregnant Women Who Use Alcohol and Other Drugs* 6-7 (2000); Margaret Kearney *et al.*, *Mothering on Crack Cocaine: A Grounded Theory Analysis*, 38 Soc. Sci. Med. 351, 359 (1996). A parent's positive drug test, in other words, is neither a sufficient nor necessary indicator that the parent is abusing or neglecting his or her children.

But even if Michigan's urine drug screens could somehow identify substance abusers, the State's argument would still fail. As a publication of the Foster Care Project of the American Bar Association notes: "[M]any people in our society suffer from drug or alcohol dependence yet remain fit to care for a child." American Bar Association, Foster Care Project, National Legal Resource Center for Child Advocacy and Protection, *Foster Children in the Courts*, 206 (Mark Hardin ed. 1983). Notwithstanding popular misconceptions and misleading media

accounts, it is simply not true that parents, particularly women, who suffer from substance abuse problems, are not effective caretakers. The research has shown that notwithstanding their addiction, “mothering is of central importance,” to women substance abusers, and that “their children [are] a stabilizing force in their lives.” Boyd, *supra*, at 14-15. See also Kearney *et al.*, *supra*, at 355, 359 (mothers who use cocaine are often able to care for their children); Paltrow *et al.*, *supra*, at 6-7. In fact, many parents who use illicit drugs go to great lengths to protect themselves and their families from addiction-related harms even as they may be unable to abstain completely from using alcohol or drugs. Boyd, *supra*, at 9-17; See also Sheigla Murphy and Marsha Rosenbaum, *Pregnant Women on Drugs: Combating Stereotype and Stigma* (1999). In its last-ditch effort to salvage its policy by claiming that substance use is synonymous with child abuse or neglect, Michigan repudiates bedrock principles of family law that prevent the State from interfering with parental custody absent a specific determination that the child’s welfare is jeopardized. See *e.g.* Mich. Comp. Laws § 712A.2 (2000) (authority and jurisdiction of the probate court).

In making these points *amici* do not mean to suggest that parents who suffer from substance abuse are not in need of drug treatment or other services. But Michigan’s drug testing policy is neither an adequate nor effective tool for identifying or combating child abuse or neglect, and to think otherwise could lead

to a serious misallocation of the limited resources needed to address this very important problem.

Because Michigan's policy fails to achieve *any* of its stated objectives, it cannot survive Fourth Amendment scrutiny and must be struck down.

C. There are many methods, far less-intrusive than suspicionless drug testing, that better identify problematic drug use.

It is constitutionally significant that there are less-intrusive and more effective methods for identifying and assessing drug abuse than the mandatory suspicionless urine testing scheme adopted by Michigan. As studies examining welfare reform note, to identify the barriers to family and employment stability “states have overwhelmingly opted to use a ‘tiered sequence’ of events for conducting assessments of new and returning TANF clients.” Scott Brawley, *Research Notes, TANF Client Assessments: Program Philosophies and Goals, Sequencing of Process, Uses of Information and State Changes or Modifications, Promising Practices, and Lessons Learned* 1 (2000) [hereinafter “*Lessons Learned*”]. As the term suggests, with tiered sequencing, clients initially receive a brief general assessment when they begin a job search. This general assessment, typically done by an interview, lacks the invasiveness of a search or seizure.

Furthermore, in order to qualify for and remain eligible for benefits, welfare recipients must participate in an ongoing series of appointments and other obligations including frequent meetings with their case workers to determine

eligibility, develop employment plans, and engage in job search activities, and classes related to life skills and job readiness. This ongoing scrutiny allows benefits workers to “spot[] and bring to account drug abuse,” *Vernonia*, 515 U.S. at 664, and permits more in depth assessment upon a showing of need, while taking into account the daily realities and changes experienced by the welfare client. *See Lessons Learned, supra*, at 11. The Supreme Court’s observation in *Chandler* is apt: the invasive nature of mandatory suspicionless drug testing is difficult to justify when its purpose is to ensure adequate performance and where, as in this case, there is opportunity for continuous review of conduct. *See Chandler, supra* at 307.

D. Mandatory suspicionless drug testing of welfare clients is inimical to the State’s goal of promoting self-sufficiency by deterring many of the most needy from accessing public benefits.

Michigan asserts an interest in helping poor people become self-sufficient – yet its policy of drug testing welfare applicants and recipients will likely *deter* eligible individuals from accessing the very benefits they need to get on their feet. A foreseeable result of Michigan’s policy, therefore, will be to impede rather than improve the well-being of a significant number of people. *See, e.g.,* Legal Action Center, *Steps to Success: Helping Women with Alcohol and Drug Problems Move from Welfare to Work*, 18 (1999) [hereinafter “*Steps to Success*”]; Laura Schmidt and Dennis McCarty, *Welfare Reform and the Changing Landscape of Substance*

Abuse Services for Low-Income Women, 29 *Alcoholism: Clinical and Experimental Research* 1298, 1304 (2000).

1. Suspicionless drug testing erodes the trust between welfare recipients and benefit workers that is essential in achieving self-sufficiency.

In passing the Personal Responsibility and Work Opportunity Act (PROWRA) in 1996, Congress emphasized individualized assessments and service delivery systems designed to best help recipients get jobs and get off of welfare. The law left to the states the charge of working with each individual welfare recipient to create individualized plans for achieving self-sufficiency, and then to provide adequate training, services and job opportunities for clients.

Suspicionless drug testing, fails to “address the principal administrative challenge of developing effective integrated services to monitor and assist welfare recipients with drug-related concerns.” Jayakody *et al.*, *supra*, at 645. Key to achieving the new goals under PROWRA is the ability of the benefits workers, to work productively with their clients towards achieving self-sufficiency. La Donna Pavetti *et al.*, *Designing Welfare-to-Work Programs for Families Facing Personal or Family Challenges: Lessons from the Field* (1996). Where trust is established, benefit workers and clients can work together to identify barriers to employment and access services to address specific needs. *See, Lessons Learned, supra*, at 11. Michigan’s policy, however, by singling out indigent people who are seeking

public benefits and subjecting them to mandatory urine drug tests, is inimical to this process.

Instead, drug testing stigmatizes welfare clients as suspected drug users, holding over their head potential sanctions, including the loss of benefits, should they refuse to submit to a drug test or fail to complete treatment. This societal stigma attached to being labeled a drug user is so great as to deter many people, particularly women, and especially indigent pregnant and/or parenting women who have an acute need for public assistance, from applying for benefits. *Steps to Success, supra*, at 16 (noting that “[s]tigma against women with alcohol and drug problems, criminal records, or both can broaden the challenge for women who are making the transition into recovery, off welfare and into jobs.”)

Michigan’s policy, in short, is antithetical to the goal of moving poor people from welfare to work, and from family discord to stability.

2. Many poor women fear that drug testing will result in a loss of liberty or removal of children from the home.

The fear and stigma of Michigan’s policy are exacerbated by how closely linked mandatory drug testing is with the criminal justice and child protective services systems, where positive urine tests can result in the revocation of probation or parole and/or the loss of one’s children. It is likely if not certain that many of the people forced to undergo drug testing in Michigan as a condition of

eligibility for public benefits would fear the uses to which such drug tests might be put.

A significant fear facing many poor women is that their children will be taken out of their homes and placed in foster care. Accordingly, parents with even the remotest concern that they may test positive for drug use will avoid the welfare system altogether to reduce the possibility that they will be reported to the child protective services agency resulting in the suspension of parental rights. *Steps to Success, supra*, at 14; Young and Gardner, *supra*, at 27 (finding that drug testing acts as a disincentive to participate in supportive services); Schmidt and McCarty, *supra*, at 1304-1305 (observing that low turnouts for TANF in some states has led some welfare officials to speculate that women with alcohol and drug problems are not applying due to fears of attracting attention of Child Protective Services.); United States General Accounting Office Report to the Chairman, Committee on Finance, U.S. Senate, *Drug-Exposed Infants, A Generation At Risk*, GAO/HRD-90-138 at 20 (June 1990) (increasing fear of incarceration and loss of children to foster care is discouraging pregnant women from seeking care.)

This particular fear is heightened in Michigan for at least two reasons. First, Michigan has made clear its intention to increase the sharing of information between the agency in charge of overseeing public assistance and the state's child protective services. State of Michigan, Family Independence Agency, *Program*

Eligibility Manual, Item 280 (Oct. 1, 1999) at 4 [hereinafter “*PEM*”].⁵ Knowledge of this cooperation may well create a sufficient deterrent for potential applicants from seeking and retaining FIP/TANF benefits and accompanying services.

Second, prosecutors in Michigan have undertaken aggressive and well-publicized efforts to charge pregnant and parenting drug users with child abuse, or even more serious charges. *See e.g., People v. Hardy*, 469 N.W.2d 50, 52-53 (Mich. App. 1991) *leave to appeal denied*, 437 Mich. 1046, *amended*, 471 N.W.2d619 (Mich. 1991) (criminal prosecution of woman under Michigan’s drug delivery statute for “delivering” controlled substance to child through the umbilical cord). *See also* Jan Hoffman, *Pregnant, Addicted - and Guilty*, NYT Magazine, August 19, 1990 (discussing *Hardy* case); *People v. Bremer*, No. 90-32227-FH, slip op. (Cir. Ct. Muskegon Cty, Mich. Jan. 31, 1991) *appeal dismissed*, No. 137619 (Mich. App. July 14, 1992) (prosecution of pregnant woman after positive urine drug test at delivery). Similar publicized efforts of prosecutors in other states might also give women pause before submitting to drug testing. *See e.g.,* Linda Greenhouse, *Justices Consider Limits of the Legal Response to Risky Behavior by Pregnant Women*, NYT (Oct. 5, 2000) (article discussing South Carolina’s policy

⁵ According to Michigan’s welfare Manual, “FIA and children’s services can better serve the family [by sharing] information . . .” State of Michigan, Family Independence Agency, *PEM, supra*, at 4. FIA also reports all cases of reduced or discontinued benefits to children’s services, who then conduct a home visit in thirty days. *PEM, supra*, at 9.

of secretly drug testing indigent women seeking prenatal care, where positive results lead to incarceration).

That mandatory government drug testing will deter people from accessing vital health and social services is not mere speculation: it is grounded in research and experience. Pregnant women in need of prenatal care, for example, avoid health clinics, or are highly reticent to divulge medically relevant but sensitive information to treatment providers for fear that knowledge of their alcohol or drug use may be used to deprive them of their freedom or their children. *See e.g.*, Southern Regional Project, *A Step Toward Recovery: Improving Access to Substance Abuse Treatment for Pregnant and Parenting Women*, 21 (1993) (a comprehensive study of perinatal substance abuse noting that women who trust their treatment providers are more likely to enter treatment). *See also* American Soc’y of Addiction Med., Bd. of Directors, *Public Policy Statement on Chemically Dependent Women and Pregnancy* (Sept. 25, 1989); General Accounting Office, *ADMS Block Grant: Women’s Set Aside Does Not Assure Drug Treatment for Pregnant Women* 5, 20 (1991).

The deterrent effect of Michigan’s drug testing policy will serve to deprive many of Michigan’s most needy families of the financial and familial stability conferred by state welfare benefits, stability that in turn helps substance abusers decrease or cease their drug use. Amy Hirsch, *Welfare Reform and Women With*

Drug Convictions in Pennsylvania 66-67 (1999). It will also prevent them from obtaining important federal benefits, such as Medicare, further jeopardizing their health and well-being and that of their children. *See e.g.*, Olson and Pavetti, *supra*, at 18, 19 (reporting that for some people, the greatest benefit of TANF is Medicare as the only health insurance for their children); *Steps to Success, supra*, at 16; Kristen Shook, *Does the Loss of Welfare Income Increase the Risk of Involvement with the Child Welfare System?* (1999).

In short, for many of the most deserving individuals, Michigan's drug testing policy will likely work *against* Michigan's goals of ensuring family stability and employability by deterring them from seeking benefits in the first place, or by preventing them from establishing productive relationships with benefits workers that is so critical in a successful move from welfare to work. Michigan's policy does not advance its stated goals, does not embody a reasonable exercise of state power, and should be struck down.

E. Every state but Michigan has rejected suspicionless drug testing to address problems of substance abuse among welfare clients.

Michigan stands alone in enacting its mandatory suspicionless urine drug testing policy as part of welfare "reform." *See* The Lindesmith Center, *Nationwide Study of Drug Testing Policies of Welfare Applicants: Did States Consider TANF Applicants' Legal Rights?* (1999). By contrast, many states have adopted screening and assessment methodologies that effectively identify individuals

impaired by drug abuse *without* conducting intrusive searches or circumventing traditional Fourth Amendment principles. *Id.*

The reasons most often cited by states for not implementing a Michigan-style drug testing policy are instructive. Twenty-one states regard such testing to be legally suspect; 17 states consider urinalysis prohibitively expensive as a matter of cost-benefit analysis; and 11 states regarded mandatory urinalysis so extreme that they never seriously contemplated such an approach. *Id.*

The states' explanations for not following Michigan's example are also telling.⁶ For example, *Louisiana*, provides its welfare applicants with a written screening test for drugs, noting that "[t]his process was decided on because the U.S. Supreme Court decisions stated that drug testing was [] a search [] that required either reasonable suspicion or [dealt] with sensitive or security matters or safety issues. *Since the drug testing of TANF recipients did not fall within these exceptions Louisiana decided that it needed reasonable suspicion in order to test them.*" Letter from Steven Mayer, General Counsel, State of Louisiana Department of Social Services to Wyeth McAdam, The Lindesmith Center of 10/8/99, at 1 (emphasis added).

Similarly, *Arkansas* uses a less-intrusive screening process to help identify substance abusers, together with "case managers [who] have been trained to

⁶ See Appendix B.

recognize certain warning signs that indicate a substance abuse problem.”

Arkansas’ approach is based on its recognition that “while substance abuse is a problem for some of our applicants/recipients, it is not a problem for all.” Letter from Roy Kindle, Arkansas Dept. of Human Services to Wyeth McAdam, The Lindesmith Center of 9/23/99, at 1. *Virginia*, too, has opted for a written screening device in lieu of drug testing, citing several advantages of this approach, including that it provides quicker identification of substance abuse problems (versus mere drug use), better prevents drug-related problems at the workplace, is less costly and is easier to implement than urine testing. *Recipient Drug Testing Study*, Commonwealth of Virginia S. Doc. No. 5 (1998).

Nebraska, meanwhile, eschews universal urinalysis of welfare applicants because that state’s welfare “reform effort recognizes that each of those we serve are [sic] unique and the assessment process upon which their employment plan is based must be responsive to this uniqueness. . . *Mandatory drug testing for all applicants would not follow our policies which support and individualized assessment process.*” Letter from Ron Ross, Nebraska Health and Human Services System to Wyeth McAdam, The Lindesmith Center of 9/30/99, at 1 (emphasis added). *Georgia* follows suit, noting that it “do[es] not feel that it is appropriate to test every applicant for TANF for substance abuse. We have chosen to act only when there is indication of a problem.” Letter from Sharon Lyle, Georgia

Department of Human Resources to Wyeth McAdam, The Lindesmith Center of 10/15/99, at 1.

In sum, only Michigan has seen fit to mandate suspicionless urine drug testing of its welfare population as a condition of eligibility for public assistance. Michigan's attempt to justify its policy on grounds of public safety, the need to ensure employability or to create family stability is belied by the experiences and teachings of its sister states, none of which claim "special needs" or seek to bypass the privacy protections of the Fourth Amendment to implement welfare reform.

V. **CONCLUSION**

For the foregoing reasons, *amici curiae* respectfully request this court affirm the District Court's ruling in this case.

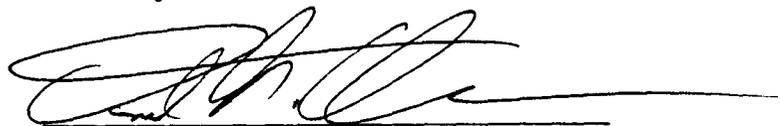
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By:



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CERTIFICATE OF COMPLIANCE PER RULE 32(a)(7)(B)

Pursuant to Rule 32(a)(7)(B) of the Federal Rules of Appellate Procedure, undersigned counsel hereby certifies that the Brief *Amici Curiae* in Support of the Appellees complies with the type-volume limitation for *Amicus* briefs as set forth in the Federal Rules of Appellate Procedure.

There are 6982 words in this brief.

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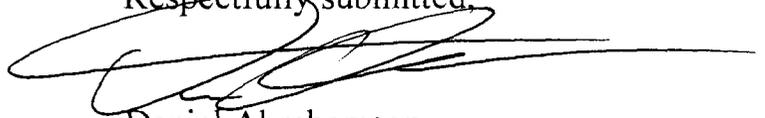
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CORPORATE DISCLOSURE STATEMENT

In accordance with Rules 26.1 & 29(c), Fed. R. App. P., *amici curiae* state that although some of the organizational signatories to this brief are incorporated, they are incorporated as non-profit corporations under §§ 501(c)(3) or (c)(6) of the Internal Revenue Code, have no parent corporations, and do not issue stock.

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APPENDIX A

Amicus Curiae American Public Health Association (“APHA”) is a national organization devoted to the promotion and protection of personal and environmental health. Founded in 1872, APHA is the largest public health organization in the world, representing over 50,000 public health professionals. It represents all disciplines and specialties in public health, including maternal and child health and substance abuse. APHA strives to improve public health for everyone by proposing solutions based on research, helping to set public health practice standards, and working closely with national and international health agencies.

Amicus Curiae National Association of Social Workers, Inc. (“NASW”) is the world’s largest association of professional social workers with over 155,000 members in fifty-five chapters throughout the United States and abroad. Founded in 1955, NASW is devoted to promoting the quality and effectiveness of social work practice, advancing the knowledge base of the social work profession, and improving the quality of life through utilization of social work knowledge and skills.

Amicus Curiae National Association of Alcoholism and Drug Abuse Counselors (“NAADAC”) is the largest national organization of alcohol and drug counselors, with 17,000 members. Founded in 1972, NAADAC is committed to increasing general awareness regarding the problems associated with alcoholism and substance abuse and to enhancing the care of individual patients through treatment, public education, and outreach programs aimed at prevention. NAADAC promotes quality treatment services for addicted individuals as the cornerstone of an effective national substance abuse policy. As an organization that certifies alcoholism and drug abuse counselors, NAADAC also promotes and monitors adherence to ethical standards throughout the nation.

Amicus Curiae American College of Obstetricians and Gynecologists (“ACOG”), founded in 1951, is a private, voluntary, not-for-profit organization of physicians who specialize in obstetric and gynecologic care. The leading group of professionals providing health care to women, ACOG’s more than 38,000 members represent over 90 percent of all obstetricians and gynecologists currently practicing in the United States. ACOG is dedicated to educating health care professionals, law and policy

makers and the general public about women's health care. ACOG is further devoted to assuring that all women have access to prenatal care for the benefit of both the fetus and the mother. Accordingly, ACOG opposes policies, like that implemented by the State of Michigan, that deter substance dependent women from seeking care.

Amicus Curiae National Council on Alcoholism and Drug Dependence ("NCADD") with its nationwide network of affiliates, provides education, information, and hope in the fight against the chronic diseases of alcoholism and other drug addictions. Founded in 1944, NCADD historically has provided confidential assessment and referral services for alcoholics and other drug addicts seeking treatment. As professionals in the field of substance abuse treatment, NCADD understands that the universal drug testing policy in Michigan's welfare program greatly inhibits the ability of persons with substance abuse problems who would otherwise qualify for welfare to access effective treatment.

Amicus Curiae, Association of Maternal and Child Health Programs ("AMCHP"), is a nonprofit organization that actively promotes and advances national and state programs and policies on behalf of maternal and child health needs and programs. AMCHP provides expert technical assistance on reproductive health, adolescent and school health, teen pregnancy prevention, HIV, tobacco control and smoking cessation, immunization, children with special health care needs, perinatal and women's health, data and assessment, and service delivery and other health related issues. AMCHP represents state public health leaders and others working to improve the health of women of reproductive age, children and youth, including those with special health care needs, and their families.

Amicus Curiae, National Health Law Project ("NHeLP"), is a non-profit law firm that works to improve health care access for low income and working poor people, children, individuals with disabilities, and people of color. Over its 30 year history, NHeLP has worked extensively with the Medicaid Act and regulations at the federal and state levels, providing technical assistance to pro bono lawyers, community based organizations, health care providers, and policy makers. The National Health Law Project is interested in assuring that state Medicaid agencies operate their programs consistent with the federal requirements and in the best interests of Medicaid beneficiaries.

Amicus Curiae, National Association on Alcohol, Drugs and Disability, Inc. (“NAADD”) is dedicated to creating greater public awareness about alcoholism, drug addiction, and substance abuse issues faced by persons with co-existing disabilities. NAADD is the only national organization exclusively dedicated to improving access to substance abuse issues for people with disabilities. Towards this end, NAADD created a network, the Access Unlimited Coalition, to work to improve access to substance abuse prevention and treatment services for all people with disabilities through the development of inclusive public policy initiatives, as well as sharing information, strategies, and resources. NAADD strives to increase public awareness, train professionals and create educational opportunities for state and federal policy makers to develop quality programs, increase funding for research, and improve compliance with state and federal accessibility statutes.

Amicus Curiae, National Advocates for Pregnant Women (“NAPW”), is a national organization formed for the purposes of promoting the human and civil rights, health and welfare of pregnant women and new mothers, and furthering the interests of their families; specifically working to ensure that pregnant women who experience substance abuse and other health problems are provided with treatment not punishment. NAPW and its staff have represented many pregnant women who have been prosecuted for being pregnant and having addiction problems. NAPW joins this brief in the recognition that pregnant women and new mothers who fear punishment in any form, whether through the criminal justice system, the child welfare system, or the social services system are likely to be deterred from seeking health care and social services that would benefit them and their families.

Amicus Curiae, National Black Women’s Health Project (“NBWHP”), launched in 1981, is the only national health advocacy organization devoted solely to the progressive causes of wellness, empowerment, health, and reproductive rights for African American women. NBWHP improves the health of Black women by providing wellness education and service, health information, and advocacy. NBWHP has a nationwide constituency of approximately 6,500 members and supporters. NBWHP has a proven track record developed over nearly two decades of linking Black women with information on reproductive health and rights, and assisting women in taking an active role in maintaining their physical and mental health.

Amicus Curiae, The Legal Action Center is a non-profit law firm and policy organization with offices in New York City and Washington, D.C., specializing in legal issues of concern to persons in recovery from, or being treated for alcohol or drug dependence and the prevention/treatment communities which serve them. The Legal Action Center works to ensure that welfare, child welfare, and Medicaid laws and policies are developed and implemented in ways that are constitutionally sound and cost-effective. The Center has, for many years, worked with employers to develop sound policies which will encourage the hiring and retention of persons with the disabilities of alcohol and drug addiction. These policies promote reliance on a comprehensive treatment approach to these disabilities. This case raises issues of great importance to the Legal Action Center and the individuals and treatment programs it represents.

Amicus Curiae, National Welfare Rights Union (NWRU), is an association of state and local chapters of welfare rights organizations across the United States. Currently, twelve states have active chapters in the union which advocates on behalf of applicants and beneficiaries of public assistance programs, as well as other low-income persons attempting to obtain economic self-sufficiency. NWRU opposes the drug-testing of welfare applicants in Michigan since there is no objective evidence that welfare recipients are any more likely to suffer from substance abuse addictions than the general population.

Amicus Curiae, Youth Law Center, based in San Francisco, is a national public interest law firm specializing in issues relating to children, especially those in out-of-home care through the child welfare or juvenile justice systems. Since 1978, Youth Law Center attorneys have represented children in civil rights and child welfare litigation in California and seventeen other states. Youth Law Center staff has considerable expertise on issues related to child abuse and neglect. They have written articles and trained hundreds of juvenile court participants and police officers on child welfare issues, including the requirement that states make reasonable efforts to prevent foster care placement and the relationship between preventive services and risk assessment in abuse and neglect cases.

Amicus Curiae, The Juvenile Law Center (“JLC”) is a private, non-profit public interest law firm that has represented children since 1975 in cases involving child welfare, juvenile justice, mental health and public health systems. JLC has worked to ensure, inter alia, that children’s rights are

protected throughout these systems. JLC's publications are used by attorneys, judges, and child welfare professionals. They include A Guide to Judicial Decisions Affecting Dependent Children: A Pennsylvania Judicial Deskbook, Child Abuse and the Law, and the Children's Rights Chronicle (a bi-monthly newsletter). JLC has participated as amicus curiae in courts including the United States Supreme Court and the Pennsylvania Supreme Court. Its offices are in Philadelphia, Pennsylvania.

Amicus curiae National Coalition for Child Protection Reform ("NCCPR") is dedicated to improving the child welfare system through public education and advocacy. NCCPR, a tax-exempt non-profit organization, is incorporated in Massachusetts and headquartered in Alexandria, Virginia. NCCPR devotes much of its effort to public education concerning widespread public misconceptions about the child protective system and its impact on the children it is intended to serve. Lawyer members of NCCPR have also individually litigated numerous precedential cases involving child protection policies and proceedings. NCCPR strongly believes that the policies of Michigan's drug testing welfare applicants and recipients is detrimental to the well-being of children.



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SECRETARY

October 8, 1999

Ms. Wyeth McAdam, Legal Intern
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RE: Louisiana's Policy on Drug Testing of
TANF applicants

Dear Ms. McAdam:

Pursuant to our conversation I'm writing to inform you of Louisiana's legal decisions that led to its current drug testing policy. As you may or may not know Louisiana currently administers a drug-screening test to applicants and from that certain applicants are referred to the Department of Health and Hospitals for further screening. The Office of Alcohol and Substance Abuse at DHH then makes a decision whether or not to do the actual testing for the drugs.

This process was decided on because the U.S. Supreme Court decisions stated that drug testing was in fact a search subject to the restrictions of the U.S. Constitution that required either reasonable suspicion or falling within the limited exception granted by the Supreme Court generally dealing with sensitive or security matters or safety issues. Since the drug testing of TANF recipients did not fall within these exceptions Louisiana decided that it needed reasonable suspicion in order to test them. The screen testing was then made a requirement for participation in the TANF program. From that screening we can then determine if further and more extensive screening is necessary from which any reasonable suspicion for drug testing would develop.

I trust this answers your questions. If there is anything else I could do please let me know.

Sincerely,


Steven L. Mayer
General Counsel

SLM:is



Arkansas Department of Human Services

Division of County Operations

Donaghey Plaza South
P.O. Box 1437
Little Rock, Arkansas 72203-1437
TDD (501) 682-8275

September 23, 1999

Wyeth McAdam
The Lindesmith Center
Office of Legal Affairs
1095 Market Street, Suite 505
San Francisco, CA 94103

Dear Mr. McAdam:

Thank you for your letter requesting information on Arkansas' decision to not require drug testing of applicants for eligibility for our TANF program, Transitional Employment Assistance (TEA).

After much consideration, we decided that while substance abuse is a problem for some of our applicants/recipients, it is not a problem for all. Therefore, we believed that mandatory drug testing of all applicants statewide was not warranted at this time. However, we do recognize that substance abuse is a problem for some applicants and recipients as they strive to move from welfare to work. We are addressing this issue through the use of a screening process that helps to identify those persons who might be in need of substance abuse treatment.

Applicants to our TEA program are screened during the initial application interview at the local county offices using a screening tool developed by the Arkansas Department of Health, Bureau of Alcohol and Drug Abuse Prevention program. The screening tool is a brief questionnaire that helps identify those persons who may be in need of substance abuse treatment. Also, our case managers have been trained to recognize certain warning signs that may indicate a substance abuse problem. Once identified, these persons are referred to a service provider who does an in-depth assessment/evaluation. If the service provider recommends treatment, and the recipient agrees to treatment, it becomes part of their Personal Responsibility Agreement and Employment Plan, and therefore becomes a requirement for that person. Failure to participate in the recommended treatment plan could result in a sanction being placed on the recipient's case, which is a reduction in the benefit amount.

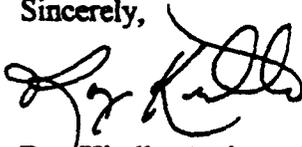
Wyeth McAdam
September 23, 1999
Page 2

We are currently in the process of enhancing this screening process to better identify persons with problems. The Bureau of Alcohol and Drug Abuse Prevention is working on a modified screening tool, and we plan to co-locate Substance Abuse counselors with TANF staff where possible. The Substance Abuse counselors would then be readily available to conduct assessments at the time of the initial TANF interview. We think this will provide better results in substance abuse identification.

In addition, we have recently implemented a requirement for substance abuse assessment and treatment, if needed, for any applicant or recipient who fails an employer mandated drug test.

If you have any further questions, please feel free to call me (501) 682-8251. Thank you.

Sincerely,



Roy Kindle, Assistant Director,
Office of Program Planning and Development

RK:lg:gr

cc: Ruth Whitney, Director, Division of County Operations
file



Andrew W. Horne, Commissioner
Penny A. Peters, Division Director

Georgia Department of Human Resources
Division of Family and Children Services • Suite 19.400 • Two Peachtree Street, NW • Atlanta, Georgia 30303-3182 • 404-651-8409

October 15, 1999

Wyeth Mc Adams
The Lindesmith Center
1095 Market Street, Suite 505
San Francisco, CA

Dear Mr. Mc Adams,

Your request for information on Georgia's policy on drug testing all TANF applicants was forwarded to me last week. We do not routinely test all TANF applicants for substance abuse. If a problem is suspected, the Department of Family and Children Services case manager administers a substance abuse screening instrument. If one or more of the criteria are found, a referral is made to a drug treatment program for further assessment and possible treatment. We have developed a special program, Ready for Work, which was designed to meet the needs of our female TANF population.

We did not feel that it was appropriate to test every applicant for TANF for substance abuse. We have chosen to act only when there is indication of a problem. Our goal when a problem is identified is to provide counseling and treatment.

If you have additional questions, you may contact me at 404-657-3738.

Sincerely,

Sharon Lyle, Acting Chief
TANF Unit

cc: Mary Ellen Brown
Floyd Wood



THOMAS J. VILSACK, GOVERNOR
SALLY J. PEDERSON, LT. GOVERNOR

DEPARTMENT OF HUMAN SERVICES
JESSIE K. RASMUSSEN, DIRECTOR

October 8, 1999

Wyeth McAdam
Legal Intern
The Lindesmith Center
1095 Market Street, Suite 505
San Francisco, CA 94103

Dear Ms. McAdam:

This is in response to your letter of September 8, 1999, requesting information about Iowa's welfare and drug policy:

Iowa has not determined that drug testing of welfare recipients is the best method to address substance abuse in this population. There have been several factors involved in making this determination to date:

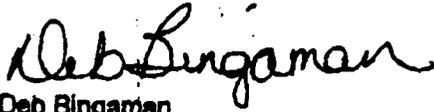
- Alcohol contributes to a greater percentage of substance abuse than non-legal substances. Drug testing would not identify when alcohol substance abuse was the factor in keeping the family on welfare.
- The expense of drug testing (initial test plus confirmatory testing of any positive tests) is not considered cost effective at this time.
- Other significant issues include:
 1. Methodology for the testing
 2. Who in the household would be tested
 3. Appropriate action to take for positive tests or noncooperation
 4. Impact on and care of the children
 5. Availability of appropriate treatment
 6. Available resources

Iowa currently asks about substance abuse issues at the time of assessment by staff in our work and training program for cash assistance recipients. Individuals who disclose a substance abuse barrier to self-sufficiency have steps in their Family Investment Agreement to address that barrier. Families who have substance abuse issues (either their own or within the family unit) are generally referred to the Family Development and Self-Sufficiency (FaDSS) program for more focused services.

You specifically asked if Iowa has not decided to do drug testing because of concerns for applicant's legal rights. Iowa has not specifically addressed this issue in any formal discussion of drug testing.

I hope this answers your questions.

Sincerely,

A handwritten signature in black ink that reads "Deb Bingaman". The signature is written in a cursive, flowing style.

Deb Bingaman
Administrator, Economic Assistance

DB/LM

NEBRASKA HEALTH AND HUMAN SERVICES SYSTEM

DEPARTMENT OF SERVICES • DEPARTMENT OF REGULATION AND LICENSURE
DEPARTMENT OF FINANCE AND SUPPORTSTATE OF NEBRASKA
MIKE JOHANNES, GOVERNOR

September 30, 1999

Wyeth McAdam, Legal Intern
The Lindesmith Center
1095 Market Street
San Francisco, CA 94103

Dear Ms. McAdam:

This is in response to your recent letter regarding the mandatory testing of clients for illegal drug use.

Our reform effort recognizes that each of those we serve are unique and the assessment process upon which their employment plan is based must be responsive to this uniqueness. If the applicant abuses substances, then services to address that will be a part of the contract that will lead to employment.

Mandatory drug testing for all applicants would not follow our policies which support an individualized assessment process. Cost and due process issues were also considered in making this decision.

Please feel free to contact us should you have additional questions.

Respectfully,

Ron Ross, Director
Department of Health and Human Services

DC:SS9260D

**REPORT OF THE
VIRGINIA DEPARTMENT OF SOCIAL SERVICES**

RECIPIENT DRUG TESTING STUDY

**TO THE GOVERNOR AND
THE GENERAL ASSEMBLY OF VIRGINIA**



SENATE DOCUMENT NO. 5

**COMMONWEALTH OF VIRGINIA
RICHMOND
1998**



COMMONWEALTH of VIRGINIA

Office of the Governor

George Allen
Governor

Robert C. Metcalf
Secretary of Health and Human Resources

November 14, 1997

TO: The Honorable George Allen

and

The General Assembly of Virginia

The report contained herein is pursuant to Senate Joint Resolution 356 as approved by the 1997 General Assembly.

As required by Senate Joint Resolution 356, the Virginia Department of Social Services, at the request of the Secretary of Health and Human Services, conducted a study on drug testing recipients of cash assistance to needy families. This report discusses the policy implications of drug testing, the potential impact on families and offers an alternative to drug testing that would still assist families in removing the barrier to self-sufficiency that substance abuse may cause.

Respectfully Submitted,

Handwritten signature of Robert C. Metcalf in cursive script.
Robert C. Metcalf

RECIPIENT DRUG TESTING STUDY

Executive Summary

Senate Joint Resolution 356 passed by the 1997 General Assembly directed the Secretary of Health and Human Resources to conduct a study on drug testing of cash assistance to needy families recipients in Virginia.

As a result of efforts at the state and federal level to require most recipients to work, it is important to develop policy that addresses substance abuse problems in a way that effectively assists the family in removing this barrier to self-sufficiency and family well-being. Time limits on receipt of cash assistance add a sense of urgency to the need for the state to identify problems of substance abuse and ensure that those in need of treatment are linked to resources.

There are several complex policy issues that arise regarding drug testing for cash assistance applicants and recipients. The role of drug testing in the context of a cash assistance program for needy families is a fundamental issue. The underlying premise of both Virginia and federal welfare reform efforts is that the cash assistance program is time-limited and is to assist needy families to progress from dependence on government assistance to self-sufficiency through employment. The roles of drug testing in this effort may be to: (1) identify recipients who need substance abuse treatment; (2) monitor compliance with treatment; (3) screen recipients on behalf of employers; and, (4) try to reduce drug use by sanctioning welfare recipients who test positive.

Costs of drug testing are high, ranging from \$2.00 up to \$70.00 per test, not including increased administrative costs associated with collecting samples, security, and evaluation of results. A random sample approach of the public assistance caseload would decrease costs as compared to testing all applicants and recipients, but would not identify all individuals who may need treatment in order to better take care of and support their children.

Several unresolved legal issues have been identified regarding mandatory drug testing of recipients. These include a Fourth Amendment issue regarding search and seizure, the unreliability of certain test results, and whether and under what conditions test results are admissible as evidence in a court of law. Because these legal issues have not yet been tested in court and because costs of drug testing are high, only three states (Nevada, Ohio, and Maryland) have opted to make drug testing a requirement of their cash assistance programs.

Some states are using client interview screening instruments as an alternative for drug testing to identify families where substance or alcohol abuse may be a barrier to employability. There is a cost associated with use of these instruments, but early evaluation results are promising. Results of the screening are used to determine the appropriateness of a referral for further testing, diagnosis, and treatment.

The role of sanctions for a failed drug test is another fundamental policy issue. States that have adopted such a policy do not have a long enough history to demonstrate that this policy is effective in deterring drug use.

Current Virginia policy addresses the drug problem in three areas: (1) a protective payee may be required in cases where the parent has persistently demonstrated mismanagement of funds in meeting the needs of the child(ren); (2) a protective payee is required when a caretaker on probation or parole has failed a drug test as reported by the Department of Corrections; and, (3) an individual who has been convicted of a drug-related felony after August 22, 1996 is excluded from eligibility for Temporary Assistance for Needy Families (TANF) and Food Stamps as required by federal law.

Treatment for substance abuse is a key component in removing a serious barrier to employability and long-term self-sufficiency for the family. The Secretary of Health and Human Resources' TANF Advisory Committee has studied the option allowed under the federal block grant to drug test recipients. The Committee's proposed recommendation is that the state not institute universal drug testing as a condition of eligibility, but rather that all adult recipients must go through an interview-based drug screening based on reliable instruments currently available. Those who fail the screening would be referred to the Community Services Board at the time of approval for TANF and would be required to follow the prescribed drug treatment program. Instituting such a policy will have the following effects on the TANF Program:

- Screening immediately will ensure quicker identification of persons with substance abuse problems and quicker intervention.
- Intervening immediately may prevent problems from occurring at the employment site, which will result in better relations with employers.
- Screening is less costly and easier to implement than drug testing.
- Treating will help alleviate substance abuse problems, which will lead to a better environment for children.
- Reducing substance abuse problems will reduce the crime rate.
- Treating drug abuse will have a positive effect on the long term possibility of a client becoming self-sufficient.

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RECIPIENT DRUG TESTING STUDY

STUDY CHARGE

Senate Joint Resolution 356 passed by the 1997 General Assembly states: “[t]he Secretary shall also study specific topics referred to it by the 1997 Session of the General Assembly, including Senate Joint Resolution No. 303 on drug testing of recipients of cash assistance to needy families in Virginia. The Secretary shall complete his work in time to submit his initial findings and recommendations by November 15, 1997, to the Governor and the 1998 Session of the General Assembly, and his subsequent findings and recommendations by November 15, 1998, to the Governor and the 1999 Session of the General Assembly.” (See Appendix I for a copy of the resolution.) Senate Joint Resolution 303 states: “[t]he study shall include consideration of the fiscal and policy implications of testing new applicants for, as well as current recipients of, cash assistance, for use of controlled substances; the constitutionality of any testing programs; the need for drug treatment linkages; and the impact on the families if the sanction used is reducing the benefits of those who test positive.”

BACKGROUND

According to the United States Department of Health and Human Services, research studies have found that between 10 and 20% of welfare recipients have a substance abuse problem, with about 5% of recipients affected enough to substantially limit their day-to-day functioning.¹ States have begun to grapple with the question of what policies to adopt toward welfare recipients with substance abuse problems in conjunction with efforts to require most welfare recipients to work or participate in employment programs. A recent Urban Institute study concludes that substance abuse has emerged as one of the primary personal or family barriers to employment among welfare recipients, together with physical disabilities, mental health problems, children's health or behavioral problems, domestic violence, housing instability, and low basic skills or learning disabilities.²

The federal Personal Responsibility and Work Opportunity Reconciliation Act of August 22, 1996 gives states the option of testing Temporary Assistance for Needy Families (TANF) recipients for illegal drug use and sanctioning those who test positive. The law also prohibits states from providing cash aid or Food Stamps to those convicted after August 22, 1996 of drug-related felony offenses, unless the state chooses to pass a law modifying this requirement or opting out of it entirely. Virginia implemented the federal prohibition against giving cash assistance to drug-convicted felons effective February 1, 1997. There are no provisions in the federal law regarding alcohol abuse. The federal five-year lifetime limit on receipt of cash assistance and Virginia's two-year limit necessitate finding ways to help recipients with substance abuse problems become more employable.

Substance abuse problems may prevent recipients from being able to undertake the tasks

necessary to find employment, or recipients dealing with these issues may lack the self-confidence they need to take on new challenges. Others may be able to find employment, but may not be able to sustain it over the long term. In their most severe forms, these problems may be so debilitating that it is impossible for a recipient to search for employment or participate in an education or training program until medical treatment is obtained. Other individuals may be able to comply with the work requirements, only to fail a potential employer's drug test.

POLICY IMPLICATIONS

There are several complex policy issues that arise regarding drug testing for cash assistance applicants and recipients.

- **The role of drug testing.** There are four basic reasons for drug testing recipients:

(1) To identify recipients who need substance abuse treatment. Treatment for substance abuse increases the individual's employability and chance to achieve self-sufficiency and is of enormous benefit to the well-being of the children.

(2) To monitor compliance with treatment. If compliance with a treatment plan is a condition of eligibility or a requirement for work participation, drug testing is a means of monitoring that compliance.

(3) To screen recipients on behalf of employers. Many employers routinely drug test job applicants. When an individual fails an employer's drug test, much time is wasted in terms of job readiness, and employers may become skeptical of hiring welfare recipients. Local social service agencies could use a drug test to ensure that a welfare recipient referred for a job opening is ready to work.

(4) To try to reduce drug use by sanctioning welfare recipients who test positive. While studies have shown that sanctions are important for increasing participation by recipients in welfare-to-work programs, the experience of several states with full family sanctions suggests that families with serious, unaddressed problems are likely to be sanctioned. In particular, Utah found that many of those being sanctioned for noncompliance in its work program had previously undetected problems, with mental health problems four times greater among sanctioned families and substance abuse problems twice as high.³ There is no existing evaluation data to demonstrate the effectiveness of sanctioning for a failed drug test, since the three states who are drug testing recipients only recently adopted the policy. Job Opportunities and Basic Skills Training (JOBS) participants in Oregon can be mandated to participate in substance abuse or mental health treatment to meet their JOBS participation requirement if there is evidence that these issues are keeping a recipient from fulfilling their plan for becoming self-sufficient. Without such evidence, recipients who have failed to follow through with required program activities may be given the choice to undergo an assessment to determine whether the recipient is in need of substance abuse treatment before the conciliation

and sanctioning process begins.⁴

Current Virginia policy has procedures for TANF cases needing a protective payee. A protective payee should be established when a parent has persistently demonstrated an inability to manage funds in the best interest of the child(ren) and when continued receipt and management of the assistance check would represent a threat to the health or safety of the child(ren). Evidence of mismanagement includes but is not limited to: continued evidence that the child(ren) is not properly fed or clothed and that expenditures for the child(ren) are made in such a way as to threaten the child's chances for healthy growth and development, or when there is persistent and deliberate failure to meet obligations for rent, food, school supplies, and other essentials. In addition, current policy requires an attempt by the local agency to set up a payee any time the adult caretaker is sanctioned. Thus, a mechanism currently exists for a payee for the TANF check when the needs of the children are not met due to the caretaker's drug or alcohol abuse or when the caretaker is sanctioned. An addition to the protective payee policy was effective July 1, 1997 as a result of a 1997 state legislative change. When informed by a probation or parole officer that a TANF caretaker has failed a drug test while on probation or parole, the local social services agency must establish a protective payee for the TANF payment. The protective payee arrangement must remain in place for one year, provided the caretaker does not fail a subsequent drug test.

- **The cost of drug testing.** Information from the Department of Mental Health, Mental Retardation, and Substance Abuse Services (DMHMRSAS) indicates that there are two state contracts for drug testing. One of these costs \$2.00 per individual to test for one substance and \$6.00 per individual to test for several substances. The current adult TANF applicant/recipient count is approximately 50,000⁵, thus the cost for a one substance test for each adult is \$100,000 and \$300,000 for the test for several substances. Costs per fiscal year increase based on how frequently tests are done. Additional administrative costs would be incurred for staff to administer the tests. If a testing service is used, the cost per test increases to \$20 (\$1,000,000 to test each adult/recipient once). The cost could rise to as much as \$70 per individual with additional laboratory testing to confirm initial test results. It should be noted that unless "the drug of choice" has been revealed by an individual the chances of hitting on the one used is not likely.

A random drug testing approach would reduce the cost incurred by testing all adult applicants and recipients, but this approach would not identify all individuals who need treatment.

Due to high cost of testing and unresolved legal issues, only three states (Nevada, Ohio, and Maryland), according to recent American Public Welfare Association's data, test recipients for illegal drugs.⁶ Other states use client interview instruments to determine which recipients should be referred for further diagnosis and treatment. Initial evaluations of effectiveness of these instruments show promising results. A significant advantage of these screening instruments are that substance abuse and alcohol abuse problems can be

identified before failures appear in meeting work requirements or before failing a potential employer's drug test. One version of this test, the Substance Abuse Subtle Screening Inventory (SASSI), costs approximately \$2.00 per individual test.⁷ Thus, costs are comparable to the drug test for one illegal substance. The SASSI is a short, one-page self-report screening tool for chemical dependency that can be administered and scored in 20-25 minutes. Because the SASSI has objective decision rules to classify individuals as chemically dependent (alcohol or other drugs) or non-chemically dependent, there is no training required for its administration. The SASSI is especially effective in identifying early stage chemically dependent individuals who are either in denial or deliberately trying to conceal their chemical dependency pattern.

- **Constitutional considerations and reliability of drug testing.** Some states contacted about their drug testing policy have stated unresolved Fourth Amendment legal issues around search and seizure and the questionable reliability of any one test. The Fourth Amendment issue may be minimized or avoided by obtaining the written acknowledgment by the recipients that they are aware that a test for illegal drugs is a requirement for the receipt of cash assistance. There are other unresolved legal issues concerning reliability of certain drug tests and whether or not test results are admissible in court. A request has been sent to the Office of the Attorney General for a response addressing these issues.
- **Availability of treatment.** When a substance abuse problem is identified by the local department of social services, either through a drug test or an interview screening instrument, a referral to the local mental health community service board is appropriate. If drug treatment is advised, Medicaid coverage (effective 2/1/97) for substance abuse treatment is available only for pregnant women.⁸ According to DMHMRSAS, waiting lists exist for some treatment programs, but no data exists on the extent of the waiting lists, and availability of treatment resources varies widely across the state. For parents in residential or day treatment, child care may be an issue.
- **Effectiveness of drug treatment.** There is a consensus among researchers that drug treatment is cost-effective and results in reduced drug use, reduced criminal justice involvement, and increased employability.⁹ State-reported treatment data show rather consistent results across states for client outcomes post-treatment as compared to pre-treatment: about a one-third drop in drug use, nearly a 60% increase in employment, and roughly \$6.00 in benefits for every dollar invested in treatment.¹⁰ Benefits measured from the point of view of taxpayers are: a decrease in crime, a decrease in public assistance payments, and a decrease in health care expenditures.

IMPACT ON FAMILY

Depending on the policy approach, the individual's response to the policy, and the seriousness of the substance abuse problem, various impacts on the family can be anticipated.

- Reduction of benefits due to a failed drug test may be the incentive for some individuals to seek treatment or may be a deterrent from drug use.
- Reduction of benefits due to a failed drug test would be less money for the children's needs.
- Sanction for a failed drug test without linkage to treatment may not accomplish the desired goal of decreased drug use.
- Establishment of a protective payee for the TANF check in families where substance abuse is a problem helps to ensure the children's financial needs are met.
- Treatment for substance abuse increases the parent's employability and chance to achieve self-sufficiency.
- Treatment for substance abuse benefits all families in the community due to reduction in crime and taxpayer expense.

PROPOSAL

The Secretary of Health and Human Resources' TANF Advisory Committee has studied the option allowed under the federal block grant to drug test recipients. The Committee's proposed recommendation is that the state not institute universal drug testing as a condition of eligibility, but rather that all adult recipients must go through an interview-based drug screening based on reliable instruments currently available. Those who fail the screening would be referred to the Community Services Board at the time of approval for TANF and would be required to follow the prescribed drug treatment program. Instituting such a policy will have the following effects on the TANF Program:

- Screening immediately will ensure quicker identification of persons with substance abuse problems and quicker intervention.
- Intervening immediately may prevent problems from occurring at the employment site, which will result in better relations with employers.
- Screening is less costly and easier to implement than drug testing.
- Treating will help alleviate substance abuse problems, which will lead to a better environment for children.
- Reducing substance abuse problems will reduce the crime rate.
- Treating drug abuse will have a positive effect on the long term possibility of a client becoming self-sufficient.

CONCLUSION

Identifying families receiving welfare who have substance abuse problems is a desirable goal in order to remove this barrier to employment and the family's self-sufficiency and well-being. The

role of recipient drug testing should be decided in this context. The role of drug testing can be to identify the illegal drug user in order to sanction the behavior and be a deterrent, or the purpose can be to identify substance abuse as one of the barriers to employment, self-sufficiency, and family well-being, and provide assistance to the family to remove the barrier. If the latter is the primary purpose, then identification of the substance abuse may be alternatively accomplished by: (1) use of client interview screening to assess barriers to employability before failures occur in the work program and refer for diagnosis and treatment; or, (2) referral for diagnosis and treatment when failure to comply with work requirements reveal a problem.

SOURCES

1. U. S. Department of Health and Human Services, Office of the Asst. Secretary for Planning and Evaluation, Washington D. C.
2. Pavetti, L. And Olson, K. (1996) Personal and Family Challenges to the Successful Transition from Welfare to Work. Final Report. Washington, D. C.: The Urban Institute.
3. Strawn, J. (1997). Substance Abuse and Welfare Reform Policy.
4. Ibid.
5. Va. Department of Social Services data from the Virginia Client Information System (VACIS) (1997).
6. American Public Welfare Association, Welfare Reform Information Center. State-By-State Welfare Reform Policy Options Information, From APWA's Survey of the Status of States' Implementation of Welfare Reform, July 1997.
7. The Substance Abuse Subtle Screening Inventory (SASSI) Institute (1997), General Information.
8. Department of Medical Assistance Services (DMAS) Medicaid Memo from Joseph M. Teefey, Director, to Community Service Boards, April 11, 1997, Subject: Expanded Mental Health, Mental Retardation, and Substance Abuse Services.
9. Strawn, J. (1997). Substance Abuse and Welfare Reform Policy.
10. Gerstein, D. R., Johnson, R. A., Larison, C. L., Harwood, H. J., and Fountain, D. (1997). Alcohol and Drug Abuse Treatment for Parents and Welfare Recipients: Outcomes, Benefits and Costs. Washington, D. C.: Office of the Asst. Secretary for Planning and Evaluation, U. S. Department of Health and Human Services.

APPENDIX I

SENATE JOINT RESOLUTION NO. 356

Requesting the Secretary of Health and Human Resources, with the assistance of the Advisory Commission on Welfare Reform, to study methods to ensure the continued success of Virginia Initiative for Employment Not Welfare (VIEW) clients as they work toward self-sufficiency.

Agreed to by the Senate, February 17, 1997

Agreed to by the House of Delegates, February 13, 1997

WHEREAS, quarterly implementation of the Virginia Initiative for Employment Not Welfare (VIEW) began in Culpeper, Fauquier, Madison, Orange, and Rappahannock Counties on July 1, 1995, and in Amherst, Appomattox, Bedford, and Campbell Counties and the Cities of Bedford and Lynchburg on October 1, 1995, and has continued in other regions of the Commonwealth; and

WHEREAS, because of encouraging early results and the requirements of national welfare reform, statewide implementation of the VIEW program has been accelerated and will be complete by October 1, 1997; and

WHEREAS, by the end of the 1996 fiscal year, declines in welfare caseloads had saved \$24 million in state and federal funds and 69 percent of VIEW participants required to be in a work activity had earned \$2.7 million in addition to AFDC benefits; and

WHEREAS, much of the initial success of the VIEW program has been due to the cooperation of local businesses, chambers of commerce, local social services agencies, Private Industry Councils, and church groups that have provided jobs, helped with transportation, and volunteered their time; and

WHEREAS, VIEW participants in the first group of localities to implement the VIEW program will begin to relinquish cash assistance benefits in July of 1997 and one year later these individuals may not be able to rely on previously provided support services such as Medicaid, day care, and transportation; and

WHEREAS, the Commonwealth wants to encourage efforts in cooperation with the private sector to help individuals complete successfully the transition to self-sufficiency, to help families maintain and improve their new independent economic status, and to preserve the vitality of communities; now, therefore; be it

RESOLVED by the Senate, the House of Delegates concurring, That the Secretary of Health and Human Resources, with the assistance of the Advisory Commission on Welfare Reform, be requested to study methods to ensure the continued success of Virginia Initiative for Employment Not Welfare (VIEW) clients as they work toward self-sufficiency. In conducting the study, the Secretary shall consider options for helping working families, with particular attention to those families who live in the first regions to implement the VIEW program. Such options shall include, but not be limited to, expanding employment opportunities, increasing the availability and accessibility of quality child day care and transportation assistance, expanding training and education opportunities, and examining health care availability. The Secretary shall also study specific topics referred to it by the 1997 Session of the General Assembly, including Senate Joint Resolution No. 346 on welfare fraud and Senate Joint Resolution No. 303 on drug testing of recipients of cash assistance to needy families in Virginia.

All agencies of the Commonwealth shall provide assistance to the Secretary of Health and Human Resources for this study, upon request.

The Secretary shall complete his work in time to submit his initial findings and recommendations by November 15, 1997, to the Governor and the 1998 Session of the General Assembly, and his subsequent findings and recommendations by November 15, 1998, to the Governor and the 1999 Session of the General Assembly, as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents.