

By: Metcalf

H.B. No. 542

A BILL TO BE ENTITLED

AN ACT

relating to the drug screening and testing of certain persons seeking benefits under the medical assistance program.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 32.024(b), Human Resources Code, is amended to read as follows:

(b) Subject to Section 32.02431, the [The] commission may provide medical assistance to other persons who are financially unable to meet the cost of medical services if federal matching funds are available for that purpose. The executive commissioner shall adopt rules governing the eligibility of those persons for the services.

SECTION 2. Subchapter B, Chapter 32, Human Resources Code, is amended by adding Section 32.02431 to read as follows:

Sec. 32.02431. DRUG SCREENING AND TESTING AS CONDITION OF BENEFIT ELIGIBILITY FOR CERTAIN APPLICANTS AND RECIPIENTS. (a) In this section, "controlled substance" and "marihuana" have the meanings assigned by Chapter 481, Health and Safety Code.

(b) The executive commissioner by rule shall adopt a drug screening and testing program for adult applicants for and adult recipients of medical assistance benefits who are eligible to receive those benefits under Section 32.024(b). The program must:

(1) comply with the drug testing requirements of 49 C.F.R. Part 382 or other similar national requirements for drug

1 testing programs recognized by the commission, except to the extent
2 those requirements are inconsistent with this section; and

3 (2) be designed to protect the rights of applicants
4 and recipients.

5 (c) Under the program, each adult applicant for and adult
6 recipient of medical assistance benefits described by Subsection
7 (b) who initially applies for those benefits or who applies for the
8 continuation of those benefits must submit to and pass a drug
9 screening assessment developed and administered by or on behalf of
10 the commission for purposes of this subsection as a prerequisite to
11 initially receiving or continuing to receive the benefits. The
12 assessment tool used under this subsection must consist of a
13 written questionnaire to be completed by the person applying for
14 medical assistance benefits and must be designed to accurately
15 determine the reasonable likelihood that a person is using a
16 controlled substance not prescribed for the person by a health care
17 practitioner or marihuana. A person whose drug screening
18 assessment indicates a reasonable likelihood of use by the person
19 of a controlled substance not prescribed for the person by a health
20 care practitioner or marihuana must submit to and pass a drug test
21 administered by or on behalf of the commission to establish the
22 person's eligibility for medical assistance benefits. A person who
23 fails a drug test required under this subsection under a final
24 determination or decision under this section is not eligible to
25 receive medical assistance benefits until the person has passed a
26 subsequent drug test administered by or on behalf of the commission
27 not earlier than four weeks after the date the person submitted to

1 the failed drug test.

2 (d) Notwithstanding Subsection (c), a person's eligibility
3 to receive medical assistance benefits is not affected by the
4 person's failure to pass a drug test if, on the basis of evidence
5 presented by the person, the commission determines that:

6 (1) the person is participating in a treatment program
7 for drug abuse; or

8 (2) the person enrolls in and begins attending a
9 treatment program for drug abuse not later than the seventh day
10 after the date initial notice of the failed drug test is sent to the
11 person.

12 (e) The executive commissioner shall prescribe procedures
13 for providing initial notice to a person who fails a drug test under
14 Subsection (c), for an appeal of a failed drug test, and for the
15 retaking of a failed drug test by a person under this section. The
16 procedures must provide:

17 (1) for prompt initial notice by mail to a person who
18 fails a drug test under Subsection (c) regarding:

19 (A) the fact of the person's failure of the drug
20 test;

21 (B) the manner in which the person may notify the
22 commission that the person has enrolled in and is attending a
23 treatment program for drug abuse;

24 (C) the manner in which the person may appeal and
25 retake the failed drug test; and

26 (D) common potential causes of a false positive
27 test result;

1 (2) for privacy with regard to the person's drug test
2 result until not later than the 14th day after the date the initial
3 notice of the failed drug test was mailed to the person, during
4 which time the person may appeal and retake the failed drug test;
5 and

6 (3) that a determination or decision that a person has
7 failed a drug test under this section becomes final on:

8 (A) the 15th day after the date the initial
9 notice of the failed drug test was mailed to the person if the
10 person does not appeal and retake the person's failed drug test as
11 provided by this section; or

12 (B) the date that a retest conducted pursuant to
13 an appeal by the person as provided by this section confirms the
14 positive drug test result.

15 (f) The commission shall administer the program under this
16 section using existing administrative funds and any funds
17 appropriated to the commission for the purposes of this section.

18 SECTION 3. (a) Section 32.02431, Human Resources Code, as
19 added by this Act, applies to:

20 (1) an adult applicant who initially applies for
21 medical assistance benefits under Chapter 32, Human Resources Code,
22 on or after January 1, 2018; and

23 (2) an adult applicant who applies for the
24 continuation of medical assistance benefits under Chapter 32, Human
25 Resources Code, on or after January 1, 2018.

26 (b) An adult applicant who initially applies for or who
27 applies for the continuation of medical assistance benefits under

1 Chapter 32, Human Resources Code, before January 1, 2018, is
2 governed by the law in effect when the person applied for medical
3 assistance benefits, and that law is continued in effect for that
4 purpose until the person subsequently applies for a continuation of
5 those benefits on or after January 1, 2018.

6 SECTION 4. If before implementing any provision of this Act
7 a state agency determines that a waiver or authorization from a
8 federal agency is necessary for implementation of that provision,
9 the agency affected by the provision shall request the waiver or
10 authorization and may delay implementing that provision until the
11 waiver or authorization is granted.

12 SECTION 5. This Act takes effect September 1, 2017.