

Drug Testing In Connection with Welfare Reform

This memo discusses the Legal Action Center's position on drug testing, information about the necessary components of drug testing for welfare recipients, and cost estimates of testing.

Legal Action Center Position

We oppose drug testing welfare recipients, as well as using drug tests to make decisions about welfare eligibility. Low-income individuals with drug and alcohol problems should not be singled out to lose their safety net because of their addiction, especially in light of the lack of treatment currently available. In addition, sanctioning these individuals may save state welfare dollars, but it will increase state and local expenditures in the criminal justice system and emergency rooms, at the very least.

Practically, drug tests would only identify recipients who had recently used drugs, not those who have drug and alcohol problems and need treatment. In addition, drug tests do not screen for alcohol, which is a far bigger problem than illegal drug use.

More effective diagnostic tools exist for screening for drug and alcohol problems among welfare recipients. They are less costly, as well as less humiliating.

It is wise for states to invest in treatment rather than wasting resources in universal drug testing. Recent research indicates that nationally between 10 and 28 percent of welfare recipients have drug or alcohol problems, which means that 72 to 90 percent do not.

It is also important to note that there are unresolved constitutional issues about whether testing of welfare recipients is an unlawful search and seizure under the 4th Amendment. While the Supreme Court has rejected 4th Amendment challenges to drug testing in some contexts, we are aware of no court that has considered this issue in this context.

We also believe that, although section 902 of the welfare reform act authorizes states to drug test welfare recipients, TANF funds *cannot* pay for the testing because section 408(a)(6) of the act prohibits the use of TANF funds for medical services. The state would have to use Medicaid or other funds to pay for testing, which would counterproductively divert money for health care services, including drug and alcohol treatment, to activities that are not cost-effective.

Necessary Components of Drug Testing Programs

To adequately protect the due process rights of recipients, welfare drug testing programs should include the following components:

- Prior written notice of the testing requirement and consequences of testing positive.
- Strict procedural safeguards to ensure that samples are not contaminated and that the "chain of custody" is preserved and well documented.
- Confirmation of all positive results by a second, more accurate test, such as the GC/MS, which is accepted in the employment sector as the appropriate confirmation test.
- Testing only by licensed laboratories that conform to federal government testing standards.
- Review of all positive results by a medical review officer (or comparably qualified individual) to determine whether the positive result is due to illegal drug use or authorized drug use.

- Referral of welfare recipients who test positive to appropriate treatment, which must be available before sanctions are imposed.
- Under no circumstances should sanctions be imposed on children on the basis of a parent's test result. The welfare reform act does not authorize sanctions against children for positive tests, only against the recipients who test positive.

Costs of Drug Testing

Research findings about the costs of drug testing are summarized below. One important fact to know about these price quotes, however, is that they *do not* include the administrative cost to the state of running the program, including staffing, sample collection, and medical review. The quotes also do not include the cost of any litigation that might arise from a lack of adequate protections for individuals being tested.

- The cost for drug testing in one NIDA-certified lab in Philadelphia was \$65, including confirmatory GC/MS testing. The sales representative indicated that a large-volume discount could bring the cost down to as low as \$35. This is still almost twice the \$18 quote Maryland state officials are using, not an insignificant difference.
- Quoted rates in New York were \$42-76 per test, including confirmatory testing of all positive results.
- A 1992 report by the General Accounting Office, the research arm of the U.S. Congress, estimated an average direct cost \$73.46 per test for annual universal drug testing of Federal employees.¹
- A 1996 American Management Association survey of member drug testing policies found an average cost of \$35 per test -- but only two-thirds used confirmatory tests, making \$35 a low estimate. The study also found that periodic and random testing programs cost employers 10 times more than programs that tested only new hires or for cause.²

¹ U.S. General Accounting Office, Employee Drug Testing: Estimated Cost to Test All Executive Branch Employees and New Hires (GAO/GGD-92-99), June, 1992.

² American Management Association, "1996 AMA Survey -- Workplace Drug Testing and Drug Abuse Policies. Summary of Key Findings," 1996.