

1 HOUSE BILL NO. 200

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9
10 A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING DRUG SCREENING AND DRUG TESTING
11 REQUIREMENTS FOR ELIGIBILITY UNDER THE TEMPORARY ASSISTANCE FOR NEEDY FAMILIES
12 PROGRAM; PROHIBITING FINANCIAL ASSISTANCE IN CERTAIN SITUATIONS; ALLOWING A THIRD PARTY
13 TO ACCEPT PAYMENTS FOR CHILDREN WHOSE PARENTS ARE INELIGIBLE FOR BENEFITS BECAUSE
14 OF DRUG TESTING AND SCREENING REQUIREMENTS; PROVIDING RULEMAKING AUTHORITY; AND
15 AMENDING SECTIONS 53-4-201, 53-4-212, 53-4-231, AND 53-4-244, MCA."

16
17 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

18
19 NEW SECTION. **Section 1. Legislative findings -- purpose.** (1) The legislature finds that the illegal
20 use of controlled substances may:

21 (a) cause health problems; and

22 (b) make it more difficult for an individual to find and maintain employment.

23 (2) It is the intent of the legislature to promote the health and well-being of Montanans by establishing
24 requirements related to drug screening, testing, and treatment for individuals who seek financial assistance under
25 this part.

26
27 NEW SECTION. **Section 2. Drug screening and testing -- conditions for eligibility -- penalties.** (1)
28 (a) An applicant for financial assistance shall complete as part of the application process a written questionnaire
29 designed to accurately determine the likelihood of the applicant having a substance abuse disorder involving the
30 misuse of a controlled substance.

1 (b) The department may not process an application for an individual who declines to complete the
2 questionnaire.

3 (2) (a) If the results of the written questionnaire indicate a reasonable likelihood that the applicant has
4 a substance abuse disorder involving the misuse of a controlled substance, the applicant shall complete a drug
5 test at the department's expense as part of the eligibility determination process.

6 (b) The department may not provide financial assistance under this part to an individual who refuses to
7 take a drug test required under this subsection (2). The individual may not reapply for financial assistance under
8 this part for:

9 (i) 90 days after a first refusal to take a drug test; or

10 (ii) 1 year after a second refusal within a 1-year period.

11 (3) An individual who tests positive for the unlawful use of a controlled substance may receive financial
12 assistance only if the applicant:

13 (a) agrees to participate at the department's expense in a substance abuse treatment program for at
14 least 30 days;

15 (b) tests negative for the unlawful use of a controlled substance in:

16 (i) each subsequent drug test required during treatment, as determined by the department by rule; and

17 (ii) an additional drug test at the conclusion of treatment; and

18 (c) meets the other requirements of receiving financial assistance under this part.

19 (4) The department shall provide financial assistance to an individual participating in a substance abuse
20 treatment program pursuant to subsection (3) if the individual is meeting the requirements of subsection (3).

21 (5) (a) The department shall deny or terminate assistance for an individual:

22 (i) who refuses to take a drug test required under this section, including a drug test required by the
23 department by rule; or

24 (ii) who tests positive for the unlawful use of a controlled substance in a drug test required under this
25 section.

26 (b) A person who is denied financial assistance or whose financial assistance is terminated under this
27 subsection (4) may not reapply for financial assistance under this part for:

28 (i) 90 days after the date on which the department determines that the individual is ineligible for financial
29 assistance because of the results of a drug test conducted pursuant to this section; or

30 (ii) 1 year after the date on which the department determines that the individual is ineligible for financial

1 assistance if the department has determined on at least one other occasion in the previous 12 months that the
2 individual is ineligible for financial assistance under this subsection (4).

3 (6) An individual required to take a drug test may advise the person administering the test of any
4 prescription or over-the-counter medication the individual is taking.

5 (7) Both parents in a two-parent family applying for financial assistance under this part must comply with
6 the requirements of this section.

7

8 **NEW SECTION. Section 3. Drug testing -- confidentiality -- penalty.** (1) Because of the privacy
9 interests of individuals involved in drug tests conducted pursuant to [section 2], the department and its employees
10 may not disclose the identity of a subject of a drug test or the results of a drug test except as necessary to
11 determine eligibility for financial assistance under this part.

12 (2) A person who discloses or compels another to disclose the identity of a subject of a drug test or the
13 results of a drug test in violation of this section is subject to a civil penalty of up to \$500. Fines collected pursuant
14 to this section must be deposited in the state general fund.

15

16 **Section 4.** Section 53-4-201, MCA, is amended to read:

17 **"53-4-201. Definitions.** As used in part 6 and this part, the following definitions apply:

18 (1) "Approved educational program" means:

19 (a) a program in a unit of the Montana university system, as provided in 20-25-201, a community college,
20 a tribal college, or any other accredited college in Montana in which an individual is enrolled in pursuit of an
21 associate's or baccalaureate degree; or

22 (b) an accredited high school or training program approved by the department by rule.

23 (2) (a) "Assessment" means the process of evaluating a recipient's skills, education, job readiness, and
24 barriers to employment. The term may include further in-depth examination to identify and access services and
25 resources to assist the recipient in eliminating barriers to employment if barriers are identified during the initial
26 assessment.

27 (b) The term does not include the drug screening, drug testing, or substance abuse treatment provided
28 for in [section 2].

29 (3) "Controlled substance" means a substance designated in Schedules # I through V of Title 50, chapter
30 32, part 2.

1 ~~(3)~~(4) "Department" means the department of public health and human services provided for in
2 2-15-2201.

3 ~~(4)~~(5) (a) "Dependent child", for public assistance purposes, means:

4 (i) a child under 18 years of age; or

5 (ii) a person under 19 years of age who is a student, as defined by the department by rule.

6 (b) The person described in subsection ~~(4)(a)(i)~~ (5)(a)(i) or ~~(4)(a)(ii)~~ (5)(a)(ii) must be living with a
7 specified caretaker relative, as defined by the department by rule.

8 ~~(5)~~(6) "FAIM project" means the families achieving independence in Montana project as established in
9 53-4-601.

10 ~~(6)~~(7) "Family" means a group of people who live with a dependent child, each of whom is related to the
11 dependent child by blood, marriage, or adoption or by law, such as:

12 (a) a parent, including a natural or adoptive parent, a stepparent, or a person considered by law to be
13 a parent in the case of a child conceived by artificial insemination; or

14 (b) a sibling.

15 ~~(7)~~(8) "Federal poverty level" means the measure of indigence established annually by the U.S. office
16 of management and budget.

17 ~~(8)~~(9) "Financial assistance" means the programs funded, in part, with temporary assistance for needy
18 families, as provided in 45 CFR 260.31(a).

19 ~~(9)~~(10) "Nonfinancial assistance" means the programs funded, in part, with temporary assistance for
20 needy families, as provided in 45 CFR 260.31(b).

21 ~~(10)~~(11) "Public assistance" or "assistance" means a type of monetary or other assistance furnished
22 under this title to a person by a state or county agency, regardless of the original source of the assistance.

23 ~~(11)~~(12) "Specified caretaker relative" means a person within a degree of kinship to the dependent child,
24 as specified by department rule, who lives with the child and exercises care and control over the child.

25 ~~(12)~~(13) "State plan" means the policies and procedures governing the state of Montana's FAIM project
26 and other programs funded by temporary assistance for needy families. It is prepared by the department and
27 certified by the federal agency that provides funding for those programs.

28 ~~(13)~~(14) "Temporary assistance for needy families" means the federal block grant established pursuant
29 to 42 U.S.C. 601, et seq."

30

1 **Section 5.** Section 53-4-212, MCA, is amended to read:

2 **"53-4-212. Department to adopt rules.** (1) The department shall adopt rules and take action as
3 necessary or desirable for the administration of public assistance programs.

4 (2) Subject to subsection (3), the department shall adopt rules that may include but are not limited to
5 rules concerning:

6 (a) eligibility requirements, including gross and net income limitations, resource limitations, and income
7 and resource exclusions;

8 (b) amounts of assistance, methods for computing benefit amounts, and the length of time for which
9 benefits may be granted;

10 (c) the degree of kinship required for a person to qualify as a specified caretaker relative in order to be
11 eligible for assistance;

12 ~~(d)~~ procedures for carrying out the drug screening, drug testing, and substance abuse treatment
13 requirements of [section 2]:

14 ~~(e)~~ procedures and policies for making payments on behalf of certain dependent children as allowed
15 under 53-4-244(2), including requirements for an individual who could serve as a third party;

16 ~~(f)~~(f) procedures and policies for employment and training programs, requirements for participation in
17 employment and training programs, and exemptions, if any, from participation requirements;

18 ~~(g)~~(g) requirements for specified caretaker relatives, including cooperation with assessments, the number
19 of hours of participation required for each month, specific activities required to address employment barriers, and
20 other terms of performance;

21 ~~(h)~~(h) eligibility for and terms and conditions of child-care assistance for financial assistance recipients,
22 including maximum amounts of assistance payable and amounts of copayments required by specified caretaker
23 relatives;

24 ~~(i)~~(i) eligibility criteria and participation requirements for nonfinancial assistance recipients;

25 ~~(j)~~(j) terms of ineligibility or sanctions against a specified caretaker relative or other family member who
26 fails to enter into a family investment agreement, as provided for in 53-4-606, or to comply with the individual's
27 obligations under the agreement, including the length of the period of ineligibility, if any;

28 ~~(k)~~(k) requirements, if any, for participation in the employment and training demonstration project;

29 ~~(l)~~(l) eligibility for and terms and conditions of extended medical assistance benefits;

30 ~~(m)~~(m) reporting requirements;

1 ~~(h)~~(n) sanctions, disqualification, or other penalties for failure or refusal to comply with the rules or
2 requirements of a public assistance program;

3 ~~(m)~~(o) exemptions from the 60-month limitation on assistance provided in 53-4-231 based on hardship
4 or for families that include an individual who has been battered or subjected to extreme cruelty, as defined in
5 section 103 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 42 U.S.C. 608,
6 including but not limited to the duration of the exemption;

7 ~~(n)~~(p) individuals who must be included as members of an assistance unit;

8 ~~(o)~~(q) categories of aliens who may receive assistance, if any;

9 ~~(p)~~(r) requirements relating to the assignment of child and medical support rights and cooperation in
10 establishing paternity and obtaining child and medical support;

11 ~~(q)~~(s) requirements for eligibility and other terms and conditions of other programs to strengthen and
12 preserve families;

13 ~~(r)~~(t) special eligibility or participation requirements applicable to teenage parents, if any;

14 ~~(s)~~(u) conditions under which assistance may be continued when an adult or a dependent child is
15 temporarily absent from the home and the length of time for which assistance may be continued;

16 ~~(t)~~(v) any random drug testing or reporting requirements for persons who are required to comply with
17 the conditions provided under 53-4-231(3) and graduated sanctions that may include terms of ineligibility for
18 violations of conditions of supervision or treatment requirements. The department may enter into agreements with
19 the department of corrections regarding testing and reporting on offenders under the supervision of the
20 department of corrections.

21 ~~(u)~~(w) approved educational programs, appropriate educational courses of study, employee assessment
22 instruments, and administration of the Montana parents as scholars program provided for in 53-4-209; and

23 (x) approved substance abuse treatment programs for the purposes of [section 2].

24 (3) ~~By October 1, 2009, the~~ The department shall adopt rules establishing a net income limit of 250%
25 of the current federal poverty level for federal funds or state general fund money used for participating families
26 in the child care for working caretaker relatives program. The department may incorporate an earned income work
27 disregard of \$200 and an additional 25% disregard from the household's gross income to determine the
28 household's net income."

29

30 **Section 6.** Section 53-4-231, MCA, is amended to read:

1 **"53-4-231. Eligibility.** (1) Subject to the provisions of subsections (2) through (6), assistance may be
2 granted under this part to:

3 (a) a dependent child;

4 (b) a specified caretaker relative or relatives, including but not limited to the natural or adoptive parents
5 of a dependent child who:

6 (i) enters into a family investment agreement, as provided for in 53-4-606, if required by the department;

7 and

8 (ii) cooperates in all assessments and screening required by the department;

9 (c) the stepparent of a dependent child who lives with the child and the child's natural or adoptive parent;

10 (d) persons under 18 years of age who live in the home with a dependent child, including but not limited
11 to siblings related to the dependent child by blood, marriage, or adoption or by law; or

12 (e) a needy pregnant woman with no other children who is receiving payments. Payments may begin
13 no earlier than the third month prior to the month in which the child is expected to be born.

14 (2) Persons who are not citizens of the United States are eligible for assistance only as provided in
15 sections 401 through 435 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, as
16 codified in Title 8 of the United States Code.

17 (3) A person who has been convicted of a felony offense, an element of which involves the possession,
18 use, or distribution of a controlled substance, as defined in 21 U.S.C. 802, is eligible for public assistance if the
19 person is actively complying with the conditions of supervision or has discharged the sentence associated with
20 the felony conviction and if the person is actively participating in treatment, if required.

21 (4) The following are not eligible for assistance:

22 (a) persons who are receiving supplemental security income payments under the Social Security Act;

23 (b) an adult or a dependent child who is or is expected to be absent from the home of the specified
24 caretaker relative continuously for a period of time prescribed by the department by rule;

25 (c) a specified caretaker relative who fails to comply with requirements for reporting the absence of a
26 dependent child from the specified caretaker relative's home as prescribed by the department by rule;

27 (d) families in which the specified caretaker relative fails or refuses to assign child and medical support
28 rights to the department or to cooperate in establishing paternity or obtaining child or medical support as required
29 by the department by rule;

30 (e) families in which the specified caretaker relative or other adult household member, as specified by

1 the department by rule, fails or refuses to:

2 (i) cooperate in any required screening or assessment; or

3 (ii) enter into a family investment agreement required by the department under 53-4-606;

4 (f) teenage parents who fail or refuse to attend secondary school or another training program as required
5 by the department by rule;

6 (g) teenage parents who are not living in an adult-supervised setting as defined by the department by
7 rule;

8 (h) a fugitive felon or probation or parole violator as defined in section 103 of the Personal Responsibility
9 and Work Opportunity Reconciliation Act of 1996, 42 U.S.C. 608; ~~and~~

10 (i) individuals who fail to comply with the drug screening and drug testing requirements of [section 2];

11 and

12 ~~(f)~~(j) individuals who have fraudulently misrepresented their place of residence, as defined in section 103
13 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 42 U.S.C. 608. The ineligibility
14 continues for a period of 10 years beginning on the date of conviction.

15 (5) A family is not eligible for financial assistance if the family includes an adult who has received
16 financial assistance in a program funded under temporary assistance for needy families in any state or states for
17 60 months or more, whether or not the months are consecutive, unless an exception is expressly granted by
18 federal law.

19 (6) This part may not be interpreted to entitle any individual or family to assistance under programs
20 funded by temporary assistance for needy families."

21

22 **Section 7.** Section 53-4-244, MCA, is amended to read:

23 **"53-4-244. Payments to person interested in child's welfare in lieu of special guardianship. (1)**

24 In lieu of guardianship proceedings, payments may be made in behalf of the child or children to another person
25 found by the local office of public assistance to be interested in or concerned with the welfare of the needy child
26 or children in accordance with the rules established by the department.

27 (2) (a) When an adult applying for financial assistance under this part is determined to be ineligible
28 because of failure to comply with the requirements of [section 2], the determination may not affect cash benefits
29 for which a dependent child or dependent children of the family are still eligible. A third party may receive and
30 administer the benefits on behalf of the eligible child or children.

1 **(b) The department may establish by rule the requirements for payments made under this subsection**

2 **(2).**"

3

4 **NEW SECTION. Section 8. Codification instruction.** [Sections 1 through 3] are intended to be codified
5 as an integral part of Title 53, chapter 4, part 2, and the provisions of Title 53, chapter 4, part 2, apply to [sections
6 1 through 3].

7

- END -