

New Jersey Department of Human Services
Office of Program Integrity and Accountability



**DEPARTMENT OF HUMAN SERVICES
DRUG TESTING PROGRAM
JUNE, 2018**



Agenda

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- Overview
- Drug testing
 - Pre-employment
 - Random – at least once per year
 - For cause
- Oversight and Monitoring
- Next Steps
 - DHS drug testing vendor
- Questions

The Stephen Komninos' Law

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- The Stephen Komninos' law, P.L.2017, c.238, strengthens protections for individuals with developmental disabilities
- **Effective May 1, 2018**, every person who is employed by any Department of Human Services (DHS) -funded, licensed or regulated program serving adults with developmental disabilities is subject to the requirements of this law. This includes programs serving individuals with a traumatic brain injury (TBI) and camps
- Additionally, drug testing applies to self-directed employees and persons working as volunteers

Drug Testing Overview

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- Drug testing via the DHS vendor, Energetix Corp, will commence on June 15, 2018
- Testing urine for controlled, dangerous substances
- DHS will cover the cost of the test

Drug Testing Overview

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**The law requires that
a person applying for employment
as a direct care staff member
at a program, facility or living arrangement
licensed or funded by the Department
shall consent to and undergo drug testing
for controlled dangerous substances
as a condition of employment**

Drug Testing Overview

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- Anyone refusing testing **CANNOT** be considered for employment
- All current employees are now subject to random testing and testing, “for cause”
- Existing employees who refuse to be tested randomly or, “for cause” shall also be terminated from employment

Drug Testing Overview

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- Direct care staff hired on/after May 1, 2018, but before the DHS vendor is operational should be placed in a provisional work status until drug testing through DHS is complete
- During this provisional work period, the employee must be supervised to the extent practicable. Provisional employees must be drug tested as soon as the DHS vendor is operational
- If an employee hired on or after May 1, 2018, was drug tested through their employer's current drug testing policies, the employee must be re-tested using the DHS vendor

Pre - Employment Testing

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- Per the law, pre-employment testing applies to direct care staff applying for employment or volunteering in, a program, facility, or living arrangement licensed or funded by the Department
- Direct care staff means a person 18 years of age or older who is employed by or volunteering in, a program, facility, or living arrangement licensed or funded by the Department and who may come into contact with individuals with developmental disabilities during the course of such employment

Pre - Employment Testing

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- All applicants receiving an offer of employment for a direct care position will be required to undergo testing for controlled dangerous substances before beginning employment
- Effective June 15, 2018, an applicant or volunteer may not commence employment until the test result is received by the employer

Pre-Employment Testing

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- The law stipulates that an applicant who tests positive for the unlawful use of any controlled dangerous substance shall not be considered for employment
- Drug testing will consist of a urine screen for the following controlled dangerous substances:
 - Marijuana
 - Cocaine
 - Opiates - including heroin, codeine/morphine and prescribed semi-synthetic opioids
 - Amphetamines/Methamphetamines, and
 - Phencyclidine (PCP)

Pre – Employment Testing

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- However, an applicant or employee who tests positive will be given an opportunity to speak with the vendor's medical review officer to discuss any relevant, legitimate medical explanations, such as a current prescription
- An applicant who refuses to be drug tested shall not be considered for employment

Random Testing

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- The law requires that at least once per year, the employing program shall require one or more current direct care staff members to undergo random drug testing
- It has been determined that 10% of a provider's direct care employees will be tested annually
- Random samples (2.5%) will be identified quarterly through the DHS vendor
- Agencies will need to ensure they have updated direct care staff rosters to provide to the DHS vendor quarterly

Random Testing

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- For agencies with less than 10 staff, a minimum of one staff will be required to undergo random testing
- DHS and the vendor will provide training on the randomization process

Random Testing

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- The law requires that any direct care employee who refuses a random test shall be terminated from employment
- Also per the law, any direct care employee who tests positive for the unlawful use of a controlled dangerous substance, may be referred for treatment services or terminated from employment
- Treatment services are not the responsibility of DHS
- Treatment services or employment termination are at the discretion of the employer

Drug Testing for Cause

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- The law stipulates that employees are subject to a drug test at any time if their supervisor has reasonable suspicion to believe the employee is illegally using a controlled dangerous substance
- Defined by law as, “Based on the staff member’s visible impairment or professional misconduct which relates adversely to patient care and safety”

Drug Testing for Cause

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- The law requires that the supervisor report this information to his or her immediate supervisor
- If the supervisor's supervisor concurs that there is reasonable suspicion to believe that a direct care staff is using a controlled dangerous substance, that supervisor shall notify the person responsible for the overall operation of the program, facility or living arrangement of his/her suspicion and request written approval to order a drug test
- Drug testing , “for cause” must be with the written approval from the person responsible for the overall operation of the program, facility or living arrangement

Drug Testing for Cause

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- The law requires that employees who test positive for an unlawful, controlled dangerous substance be referred for treatment or their employment terminated
- Terminating employment or requiring treatment is at the discretion of the provider. DHS is not responsible for providing or paying for treatment

Drug Testing for Cause

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- Employees who refuse to submit to a drug test under this provision shall be terminated
- Providers can schedule, “for cause” testing through the DHS vendor at any time
- Clear policies and staff understanding is critical

DHS Drug Testing Vendor



Drug Testing Process

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- All providers will have an account with a web-based portal called i3screen. This system captures all stages of a drug test transaction
- Tests will be performed at Quest Diagnostic medical clinics
- Quest Diagnostic operates in every county throughout the state
- All employees who test positive will have the opportunity to speak with a medical review officer to discuss any relevant legitimate medical explanations, such as a current prescription

i3screen Features

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- **i3screen has multiple features to assist and facilitate use**
- **This includes the ability to:**
 - Search by 13 different attributes
 - Add notes
 - Edit user account profiles
 - View pending results, expired orders, etc.
 - View the custody and control form
 - Access technical support

OPIA Employee Controls and Compliance Unit

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To streamline this critical element of the law and to ensure maximum efficiency, the Office of Program Integrity and Accountability (OPIA), restructured the Central Fingerprint Unit and created the Employee Controls and Compliance Unit or ECCU - to facilitate and monitor compliance with drug testing, as well as all other on-boarding requirements - including, fingerprinting and criminal history background checks, child abuse record information checks (CARI) and the Central Registry of Offenders

Office of Licensing – Oversight and Monitoring

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For licensed programs,
the DHS Office of Licensing
will check for compliance with the
drug testing provision of the
Stephen Komninos' Law
and will also check for compliance with the other
elements of the law during inspections

Office of Licensing – Oversight and Monitoring

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- For drug testing compliance, the Office of Licensing will:
 - Conduct a review of the provider's policy and procedure on drug testing
 - Policy must include a provision that the provider notifies staff of all drug testing requirements

Office of Licensing – Oversight and Monitoring

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- **Additionally, the Office of Licensing will check for documentation that the provisions of the law were implemented and check for:**
 - Evidence that employees hired after May 1, 2018, were drug tested
 - Evidence of compliance regarding random testing
 - Evidence of compliance regarding drug testing for cause
 - Evidence of action taken for unlawful use of controlled dangerous substances

Next Steps

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- The law requires that providers notify staff regarding the provisions of the law related to drug testing
- Providers will receive an **i3screen** username and password via a separate communication
- Upcoming training webinar for:
 - account set-up
 - random sample process
- Training dates are:
 - 06/19/18 at 2:00 p.m., and
 - 06/20/18, at 11:00 a.m.

Next Steps

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- Providers should begin pre-employment drug testing June 15, 2018
- All employees hired between May 1, 2018, and June 14, 2018, should submit to a drug test as soon as possible
- Providers must maintain updated rosters of existing staff

Next Steps

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DHS is working to update regulations and various policies affected by the enactment of the Stephen Komninos' Law, including the provisions related to drug testing

- N.J.A.C. 10:44A - Standards for Community Residences For Individuals With Developmental Disabilities
- N.J.A.C. 10:44B - Manual of Standards For Community Care Residences
- N.J.A.C. 10:44C - Standards For Community Residences For Persons with Head Injuries
- N.J.A.C. 1044D - Central Registry of Offenders Against Individuals With Developmental Disabilities
- Amendments to Department Administrative Orders, Division Circulars and other internal policies

Questions/Additional Information

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Questions can be emailed to:

DHS-SKLAW.OPIA@dhs.state.nj.us

The New Jersey Department of Human Services

Additional information can be found on the DHS website:

<http://www.state.nj.us/humanservices/home/skl.html>

Thank you.

