



August 25, 2017

To: Wisconsin Medicaid Program
Wisconsin Department of Health Services
1 W. Wilson St
Madison, WI 53703

Re: Proposed Rule DHS 38

On behalf of WISCAP, Inc. please accept the following comments on DHS 38 concerning drug testing of able-bodied FoodShare participants.

Most people in the state are in agreement that drug abuse is a serious problem in Wisconsin with significant health, family and economic implications, and that addressing addiction should be a top priority for both public & private sectors.

However the Department of Health Services' (DHS) plan as outlined in DHS 38 to implement mandatory drug screening, testing, treatment & sanctioning protocols for underemployed and unemployed able-bodied adult SNAP recipients who seek FoodShare Employment & Training (FSET) services is problematic on many levels.

Suspicion-less Search may be Unconstitutional. Courts have repeatedly ruled that suspicion-less drug testing is unreasonable search and seizure and that simply receiving public assistance is not a sufficient basis for suspicion of drug use. In 2014 the 11th Circuit Court of Appeals in ruling against Florida's drug testing policy said it violated the fourth amendment for its "*unreasonable SEARCH of applicants without evidence of a more prevalent, unique, or different drug problem among TANF applicants than in the general population*". WISCAP is concerned DHS 38 is an unconstitutional suspicion-less search for illegal drug use among certain low-income adult applicants for FSET services.

New condition of Eligibility. The policy appears to impose a new condition of eligibility – prohibited by federal law – on unemployed & underemployed able-bodied adult SNAP recipients who must enroll in an employment & training program to maintain eligibility for benefits. Since FSET is the primary employment & training program available to them, losing eligibility for services because of 2 failed drug treatments, denies access to FSET services, resulting in the loss of SNAP benefits. This effectively imposes a new condition of eligibility on affected persons to successfully complete treatment.

Perpetuates Stereotypes: DHS 38 also perpetuates stereotypes of low-income residents and stigmatizes those seeking FSET services and SNAP benefits by making applicants prove they are drug-free. The authorizing legislation did not require other recipients of publically funded dollars to prove they are drug-free, such as those whose salaries come from general purpose revenue or businesses receiving tax credits or economic development grants.

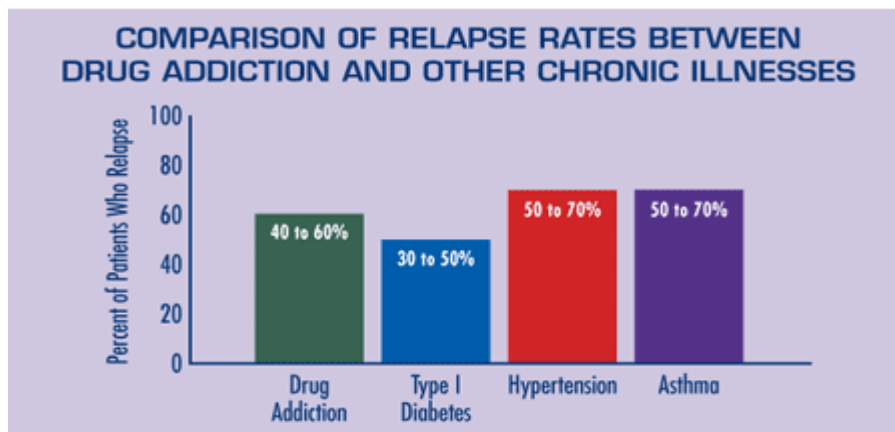
Costly & Ineffective. States that have implemented screening & drug testing of those receiving TANF services have found it to be both costly and ineffective at identifying people in need of treatment. A review of 10 states by *Think Progress* in February 2016 found positive drug tests were significantly below 1% for every state except Kansas (1.5%) and Oklahoma (3.5%). These efforts cost millions in public tax dollars that could have been used to improve access to treatment and eliminate waiting-lists.

Addiction is a Disease... While not all drug use indicates a disease, compulsive and uncontrollable drug abuse defines addiction and is especially problematic. The National Institute of Drug Abuse, within the National Institutes of Health – the federal government’s own health agency – states that “addiction is defined as a chronic, relapsing brain disease that is characterized by compulsive drug seeking and use, despite harmful consequences. It is considered a brain disease because drugs change the brain; they change its structure and how it works. These brain changes can be long lasting and can lead to many harmful, often self-destructive, behaviors.”

The National Center on Addiction & Drug Abuse concurs, stating that “addiction is a complex disease of the brain and body that involves compulsive use of one or more substances despite serious health and social consequences. Addiction disrupts regions of the brain that are responsible for reward, motivation, learning, judgment and memory. It damages various body systems as well as families, relationships, schools, workplaces and neighborhoods.”

...So Treatment is Needed, Not Sanctions. DHS 38 is flawed because it sanctions certain unemployed and underemployed adult SNAP recipients - who suffer from a “chronic, relapsing brain disease” - by making them ineligible for FSET services after two failed courses of medical treatment, likely resulting in the loss of SNAP benefits. Does DHS condition eligibility for FSET services on the successful treatment of other diseases - like cancer, hypertension, diabetes, asthma, or eating disorders -that also have physical and behavioral elements? Of course not - the public would consider it absurd. And it is no less absurd to create FSET rules that can effectively limit or deny basic nutrition to certain low-income, food insecure adults whose medical treatment for addiction is twice unsuccessful. These individuals need sustained access to quality, effective, voluntary treatment, regardless of relapses, not sanctions that take away their access to basic nutrition.

Arbitrary & Unreasonable Limits on Relapses. Multiple relapses during treatment are likely, even common, during the course of treatment for addiction. The Journal of the American Medical Association published this chart on relapse rates:



Additionally, the National Institute on Drug Abuse said the following regarding relapses: “*The chronic nature of the disease means that relapsing to drug abuse at some point is not only possible, but likely. Relapse rates (i.e., how often symptoms recur) for people with addiction and other substance use disorders are similar to relapse rates for other well-understood chronic medical illnesses such as diabetes, hypertension, and asthma, which also have both physiological and behavioral components.*”

While a combined relapse rate of 40% to 60% is the average across many types of drug addiction, researchers find considerably higher rates for opiate addiction – in the range of 90% to 99%. Entering treatment, relapsing, re-entering treatment, relapsing again - is common during the often lengthy journey to recovery and sobriety. It's not uncommon for stable sobriety to take years – just as with many other serious medical conditions. Someone suffering from addiction needs access to sustained & supportive treatment to be successful – and policies grounded in medical evidence & science, not on political judgements. Yet DHS 38 arbitrarily allows just two treatment failures before determining someone ineligible for FSET services – which for many so-called “able-bodied” adults without dependents who are unemployed & underemployed is tantamount to limiting or losing their SNAP food benefit. How many physicians tell their patients in treatment for heart disease or diabetes to consume poor quality diets?

Drug-Testing While in Treatment Not Allowed. Federal rules also prohibit drug testing while a SNAP participant is in treatment. Conducting a drug test via a proxy - the drug treatment provider - doesn't circumvent this prohibition.

Who Pays the Cost of Transportation? DHS 38 states an administering agency will pay for drug screening & testing costs, and for treatment costs not covered by Medicaid, but doesn't clarify who will pay the costs of transportation to screening, testing and treatment appointments.

DHS 38 will Increase Hunger & Stress. If an unemployed or underemployed “able-bodied” adult loses their eligibility for FSET because of several treatment failures and subsequently loses their SNAP benefit, it would further increase their food insecurity and stress, possibly leading to a worsening of their medical condition. This scenario may unfold in ever more Wisconsin households because of DHS's plan to require parents of school-age children to also work half-time or be in a half-time employment & training program, like FSET. In a similar manner these parents could lose their FSET eligibility if drug treatment failed twice and could subsequently lose their portion of SNAP benefits, unavoidably increasing hunger in affected households, including among school-age children.

Explore Voluntary Treatment – DHS should robustly explore self-identification of addiction among SNAP participants and encourage voluntary referral to treatment, without food sanctions and artificial limits on the number of allowable relapses. DHS could also create a community advisory group to provide input and feedback on the implementation of any drug screening and testing protocol.

About WISCAP: *WISCAP is the statewide association of Wisconsin's 16 anti-poverty Community Action Agencies and 2 statewide special purpose agencies. Our network addresses the problems of poverty across multiple sectors by helping low-income people attain greater economic self-sufficiency and by relieving situations of distress. Community Action Agencies strengthen families and communities by providing programs and services, including housing, energy, transportation, education, health, business development, family support, and food security.*