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**DHS 38 Drug Testing Rule**

Thank you Mr. Chair and members of the Assembly Committee on Public Benefit Reform for the opportunity to speak today on DHS 38, related to drug screening of able-bodied adults in the Foodshare Employment and Training (FSET) Program. My name is Casey Himebauch and I am the Deputy Administrator for the Division of Medicaid Services at the Department of Health Services.

DHS 38 plays an important role in making sure Wisconsinites on FoodShare have the help they need to enter our workforce. It builds on Governor Walker's "Wisconsin Works for Everyone" initiative, aimed at helping more people move out of government assistance and into employment and independence.

First, I would like to address what this rule is not. This rule is not about kicking people off FoodShare. It is not a factor in determining eligibility for FoodShare. Quite the contrary, it is about helping make sure Wisconsinites are ready to enter the workforce. This means that anyone who screens and tests positive for drug use will be offered treatment at no cost.

As we speak today, Wisconsin's unemployment numbers are the best in the history of the state, at only 3%. Yet, Wisconsin employers, particularly in the fields of manufacturing and transportation say they have good jobs available. In fact, there are more than 86,800 jobs currently available at Job Center of Wisconsin.com. For many of these jobs, employers also tell us they need skilled workers who can pass a drug test. This is especially relevant in today's current environment where opioid deaths are on the rise and Wisconsin is leading the charge to curb this trend.

DHS 38 would require able-bodied adults enrolling in the FSET Program to undergo a drug screening, and if necessary a drug test. It would not require everyone in FSET to take a drug test, only those whose screen indicates they may be at risk for substance use disorder. The department estimates a relatively small percentage of the FSET program participants would end up testing positive, similar to the percentage of the overall population. Therefore, the department does not anticipate a large cost associated with drug treatment from this rule.

If approved by the legislature, DHS will send the rule and our state plan to the United States Department of Agriculture Food and Nutrition Services (FNS). DHS will also work with our partners, including the Income Maintenance Consortia, to determine the best path to implement this rule, including systems changes that need to be developed and completed prior to implementation. We do not anticipate being able to implement the rule before the end of 2018.

Thank you for the opportunity to appear before you today. We look forward to the legislature approving this rule and continuing to partner with us on initiatives that help put more Wisconsinites back to work. I would be happy to take any questions.



# Wisconsin Community Action Program Association



January 30, 2018

TO: The Honorable Members of the Assembly Committee on Public Benefit Reform

FROM: Brad Paul,  
Executive Director

Jonathan Bader  
Programs & Policy Director

RE: Clearinghouse Rule 17-005 related to Drug-Testing SNAP recipients referred to FSET

We want to thank the Committee Chair & Members for accepting our testimony.

WISCAP is the statewide Association of Wisconsin's 16 anti-poverty Community Action Agencies and 2 special purpose agencies. Thirteen (13) of our members and 3 other partners coordinate the statewide distribution of federal TEFAP commodities to 334 food pantries, meal sites and shelters in every county. Food pantries in our network serve 200,000 people each month, while meal sites & shelters provide 45,000 meals each month. Community Action Agencies have been involved in addressing food security in Wisconsin for many decades. In November WISCAP passed a significant milestone - the distribution of 200 million pounds of commodities to local communities over the past 20 years.

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 plan 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 11<sup>th</sup> Circuit Court of Appeals in ruling against Florida's drug testing polity 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 the rule 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 would be required (under SB 2) to participate in FSET to maintain eligibility for benefits. Losing access to FSET

services because of 2 failed drug treatments, denies access to FSET, resulting in the loss of SNAP benefits. This effectively imposes a new condition of eligibility on affected persons to successfully complete treatment.

Perpetuates Stereotypes: The proposed rule 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.”

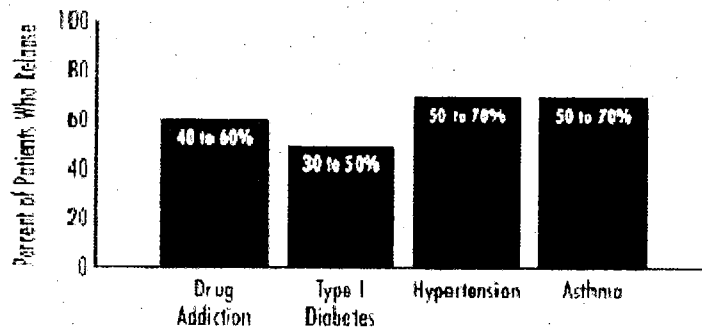
The National Center on Addiction & Drug Abuse concurs, stating that “addiction is a complex disease of the brain and body that involves compulsive use of one or more substances despite serious health and social consequences. Addiction disrupts regions of the brain that are responsible for reward, motivation,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

....So Treatment is Needed, Not Sanctions. The proposed rule is fundamentally flawed because it sanctions certain 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 would effectively limit or deny basic nutrition to 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.

Persons with Drug Addictions are Not Work-Ready: Shouldn’t an individual suffering from a “chronic, relapsing brain disease” - aka drug addiction - be considered “not work-ready” and therefore exempt from referral to or compliance with FSET - and instead referred for drug treatment without the threat of sanctioning food benefits?

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:

**COMPARISON OF RELAPSE RATES BETWEEN  
DRUG ADDICTION AND OTHER CHRONIC ILLNESSES**



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 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? The proposed rule states an administering agency will pay for drug screening & testing costs, and for treatment costs not covered by Medicaid, but doesn’t clarify who pays for transportation to screening, testing and treatment appointments.

The Rule will Increase Hunger. If an unemployed or underemployed “able-bodied” adult loses their eligibility for FSET and subsequently loses their SNAP benefit, it would further increase food insecurity and stress, possibly leading to a worsening of their condition. This scenario will unfold in ever more Wisconsin households because SB 2 would require parents of school-age children to also participate in

FSET and presumably submit to the same drug-testing protocols. If parents lose their portion of SNAP benefits, it unavoidably increases hunger in affected households, including 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 relapses. DHS should create a community advisory group to provide input and guidance 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.*