

NOTICE OF INTENT

Department of Children and Family Services

Office of Management and Finance

Substance Abuse Testing (LAC 67:I.Chapter 1)

The Department of Children and Family Services, Office of Management and Finance (the department) proposes to repeal LAC 67:I.Chapter 1 as authorized by R.S. 36:474 and R.S. 46:102. This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

This rulemaking action proposes to repeal language contained in LAC 67:I.Chapter 1. This Chapter's content consists of internal agency policy related to employment practices, workplace standards, and associated consequences. Such material is operational in nature and is not appropriate for inclusion in the *Louisiana Administrative Code*. Drug testing for public employees is authorized under R.S. 49:1015, and pursuant to this statute, substance abuse testing has been promulgated by agency policy.

This Chapter's content does not meet the definition of a rule under R.S. 49:951, and its removal from this *Louisiana Administrative Code* title has been initiated as a result of a review dictated by Act 192 of the 2024 Regular Legislative Session and Executive Order JML 25-038.

This Notice of Intent has been drafted utilizing plain language principles to ensure clarity and accessibility for all users. It has also been reviewed and tested for compliance with web accessibility standards.

Title 67

SOCIAL SERVICES

Part I. General Administration

Chapter 1. Substance Abuse Testing

§101. Introduction and Purpose

~~A. The employees of the state of Louisiana are among the state's most valuable resources, and the physical and mental well-being of these employees is necessary for them to properly carry out their responsibilities. Substance abuse causes serious adverse consequences to users, impacting on their productivity, health and safety, dependents and co-workers, as well as the general public. Substance abuse on the job can cause undue risk of harm to the public in general and the children and other clients directly served by and dependent on the services of the Department of Social Services (DSS).~~

~~B. The state of Louisiana has a long-standing commitment to working toward an alcohol-free, drug-free workplace. In order to curb the use of illegal drugs by employees of the state of Louisiana, the Louisiana Legislature enacted laws which provide~~

~~for the creation and implementation of drug testing programs for state employees.~~

~~C. The Department of Social Services fully supports these efforts and is committed to an alcohol-free, drug-free workplace.~~Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:1001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of the Secretary, LR 25:1145 (June 1999), amended by the Department of Social Services, Office of Management and Finance, LR 32:114 (January 2006), LR 35:967 (May 2009), repealed LR 53:-

§103. Applicability

~~A. This policy shall apply to all employees of DSS including appointees and all other persons having any employment relationship with this agency.~~Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:1001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of the Secretary, LR 25:1145 (June 1999)- ,
repealed LR 53:

§105. Definitions

~~Controlled Substance~~—a drug, chemical substance or immediate precursor in Schedules I through V of R.S. 40:964 or Section 202 of the Controlled Substances Act (21 U.S.C. 812).

~~Designer (Synthetic) Drugs~~—those chemical substances that are made in clandestine laboratories where the molecular structure of both legal and illegal drugs is altered to create a drug that is not explicitly banned by federal law.

~~Employee~~—unclassified, classified, and student employees, student interns, both paid and unpaid, and any other person having any employment relationship with the agency, regardless of the appointment type (e.g., full-time, part-time, temporary, etc.).

~~Illegal Drug~~—any drug which is not legally obtainable or which has not been legally obtained, to include prescribed drugs not legally obtained and prescribed drugs not being used for prescribed purposes or being used by one other than the person for whom prescribed.

~~Public Vehicle~~—any motor vehicle, water craft, air craft or rail vehicle owned or controlled by the state.

~~Reasonable Suspicion~~—belief based upon reliable, objective and articulable facts derived from direct observation of specific physical, behavioral, odorous presence, or performance indicators and being of sufficient import and quantity to lead a prudent person to suspect that an employee is in violation of this policy.

~~Safety Sensitive or Security Sensitive~~ a position determined by the appointing authority to contain duties of such nature that the compelling state interest to keep the incumbent drug-free outweighs the employee's privacy interests. Executive Orders Number KBB-2005-08 and KBB-2005-11 set forth the following non-exclusive list of examples of safety-sensitive and/or security-sensitive positions in state government:

1. ~~positions with duties that may require or authorize the safety inspection of a structure;~~

2. ~~positions with duties that may require or authorize access to a prison or an incarcerated individual;~~

3. ~~positions with duties that may require or authorize carrying a firearm;~~

4. ~~positions with duties that may allow access to controlled substances (drugs);~~

5. ~~positions with duties that may require or authorize inspecting, handling, or transporting hazardous waste as defined in R.S. 30:2173(2) or hazardous materials as defined in R.S. 32:1502(5);~~

6. ~~positions with duties that may require or authorize any responsibility over power plant equipment;~~

7. ~~positions with duties that may require instructing or supervising any person to operate or maintain, or~~

~~that may require or authorize the operating or maintaining, any heavy equipment or machinery,~~

~~8. positions with duties that may require or authorize the operation or maintenance of a public vehicle, or the supervision of such an employee.~~

~~Under the Influence for the purposes of this policy, alcohol, a drug, chemical substance, or the combination of alcohol, a drug, chemical substance that affects an employee in any detectable manner. The symptoms or influence are not confined to that consistent with misbehavior, nor to obvious impairment of physical or mental ability, such as slurred speech or difficulty in maintaining balance. A determination of influence can be established by a professional opinion or a scientifically valid test.~~

~~Workplace any location on agency property including all property, offices, facilities, vehicles and equipment, whether owned, leased or otherwise used by the agency or by an employee on behalf of the agency in the conduct of its business, in addition to any location from which an individual conducts agency business while such business is being conducted.~~Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:1001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of the Secretary, LR 25:1145 (June 1999),

amended by the Department of Social Services, Office of Management and Finance, LR 32:114 (January 2006) ~~+, repealed LR 53:~~

§107. DSS Drug-Free Workplace Policy

~~A. It shall be the policy of DSS to maintain a drug-free workplace and a workforce free of substance abuse. Employees are prohibited from reporting for work, performing work, or otherwise being on any duty status for DSS with the presence in their bodies of alcohol, illegal drugs, controlled substances, or designer (synthetic) drugs at or above the initial testing levels and confirmatory testing levels as established in the contract between the state of Louisiana and the official provider of drug testing services. Employees are further prohibited from illegal use, possession, dispensation, distribution, manufacture, or sale of controlled substances, designer (synthetic) drugs, and illegal drugs at the work site and while on official state business, on duty or on call for duty.~~

~~B. To assure maintenance of a drug-free workforce, it shall be the policy of DSS to implement a program of drug testing in accordance with R.S. 49:1001 et seq., and all other applicable federal and state laws, and executive orders, as set forth below.~~ Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S.
49:1001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Social
Services, Office of the Secretary, LR 25:1146 (June 1999),
amended by the Department of Social Services, Office of
Management and Finance, LR 32:114 (January 2006), LR 35:967 (May
2009) ~~7~~, repealed LR 53:

§109. Conditions Requiring Drug Tests

~~A. DSS shall require alcohol/drug testing under the
following conditions.~~

~~1. Reasonable Suspicion. Any employee shall be
required to submit to an alcohol/drug test if there is a
reasonable suspicion (as defined in this policy) that the
employee is using illegal drugs or is under the influence of
alcohol while on duty. At least two supervisors/managers must
concur there is reasonable suspicion before an employee is
required to submit to an alcohol/drug test. Supervisors shall
decide who will drive the employee to the testing site.~~

~~2. Post-Accident. Each employee involved in an
accident that occurs during the course and scope of employment
shall be required to submit to an alcohol/drug test if the
accident:~~

~~a. involves circumstances leading to a
reasonable suspicion of the employee's alcohol/drug use;~~

~~b. results in serious injury or a fatality; or~~
~~e. results in or causes the release of~~
~~hazardous waste as defined in R.S. 30:2173(2) or hazardous~~
~~materials as defined in R.S. 32:1502(5).~~

~~3. Rehabilitation Monitoring. Any employee who is~~
~~participating in a substance abuse after-treatment program or~~
~~who has a rehabilitation agreement with the agency shall be~~
~~required to submit to periodic drug testing.~~

~~4. Pre-Employment. Each prospective employee shall~~
~~be required to submit to drug screening at the time and place~~
~~designated by the appointing authority or designee following a~~
~~conditional job offer contingent upon a negative drug-testing~~
~~result. A prospective employee who tests positive for the~~
~~presence of drugs in the initial screening or who fails to~~
~~cooperate in the testing shall be eliminated from consideration~~
~~for employment. Employees transferring to DSS from other state~~
~~agencies without a break in service are exempt from pre-~~
~~employment testing.~~

~~5. Safety Sensitive and Security Sensitive~~
~~Positions-Appointments and Promotions. Each employee who is~~
~~offered a safety-sensitive or security sensitive position (as~~
~~defined in this policy) shall be required to pass a drug test~~
~~before being placed in such position, whether through~~
~~appointment or promotion. (See §119 listing of these positions.)~~

~~6. Safety Sensitive and Security Sensitive Positions-Random Testing. Every employee in a safety-sensitive or security-sensitive position shall be required to submit to alcohol/drug testing as required by the appointing authority, who shall periodically call for a sample of such employees, selected at random by a computer-generated random selection process, and require them to report for testing. All such testing shall, if practicable, occur during the selected employee's work schedule.~~Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:1001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of the Secretary, LR 25:1146 (June 1999), amended by the Department of Social Services, Office of Management and Finance, LR 32:114 (January 2006), LR 35:967 (May 2009) ~~-,~~ repealed LR 53:

§111. Procedure

~~A. Alcohol/drug testing pursuant to this policy shall be conducted for the presence of any illegal drugs including, but not limited to, cannabinoids (marijuana metabolites), cocaine metabolites, opiate metabolites, phencyclidine, and amphetamines in accordance with the provisions of R.S. 49:1001 et seq. DSS reserves the right to test employees for the presence of any~~

~~alcohol, illegal drugs or controlled substance when there is a reasonable suspicion to do so.~~

~~B. The human resources director of each office shall be involved in any determination that one of the above-named conditions requiring alcohol/drug testing exists. Upon such determination, the appointing authority or designee for each office shall notify the supervisor of the employee to be tested, who shall immediately notify the employee where and when to report for the testing.~~

~~C. Testing services shall be performed by a provider chosen by the Office of State Purchasing, Division of Administration, pursuant to applicable bid laws. At a minimum, the testing service shall assure the following.~~

~~1. All specimen collections will be performed in accordance with applicable federal and state regulations and guidelines to ensure the integrity of the specimens and the privacy of the donors. The appointing authority or designee for each office shall review and concur in advance with any decision by a collection site person to obtain a specimen under direct observation. All direct observation shall be conducted by a collection site person of the same gender.~~

~~2. Chain of custody forms must be provided to ensure the integrity of each urine specimen by tracking its handling and storage from point of collection to final disposition.~~

~~3. Testing shall be performed by a SAMSHA-certified (Substance Abuse Mental Services Health Administration) laboratory.~~

~~4. The laboratory shall use a cut-off of 50 ng/ml for a positive finding in testing for cannabinoids.~~

~~5. The laboratory shall use a concentration cut-off of 0.08 or more for the initial positive finding in testing for alcohol.~~

~~6. All initial positives reported by the laboratory must be confirmed by gas/chromatography/mass spectrometry.~~

~~7. All confirmed positive results of alcohol/drug testing shall be reported by the laboratory to a qualified medical review officer.~~ Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:1001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of the Secretary, LR 25:1146 (June 1999), amended by the Department of Social Services, Office of Management and Finance, LR 32:115 (January 2006), LR 35:967 (May 2009) ~~-,~~ repealed LR 53:

§113. Confidentiality

~~A. All information, interviews, reports, statements, memoranda, and/or test results received by DSS through its alcohol/drug testing program are confidential communications,~~

~~pursuant to R.S. 49:1012, and may not be used or received in evidence, obtained in discovery, or disclosed in any public or private proceedings, except in an administrative or disciplinary proceeding or hearing, or civil litigation where drug use by the tested individual is relevant. These records will be kept in a locked confidential file just as any other medical records are retained.~~Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:1001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of the Secretary, LR 25:1147 (June 1999), amended by the Department of Social Services, Office of Management and Finance, LR 32:115 (January 2006)~~-,~~ repealed LR 53:

§115. Responsibilities

~~A.—The Secretary of DSS is responsible for the overall compliance with this policy and shall submit to the Office of the Governor, through the Commissioner of Administration, a report on this policy and drug testing program; describing the process, the number of employees affected, the categories of testing being conducted, the associated costs of testing, and the effectiveness of the program by December 1 of each year.~~

~~B.—The appointing authority or designee is responsible for administering the alcohol/drug testing program; determining~~

~~when drug testing is appropriate; receiving, acting on, and holding confidential all information received from the testing services provider and from the medical review officer; and collecting appropriate information necessary to agency defense in the event of legal challenge.~~

~~C. All supervisory personnel are responsible for assuring that each employee under their supervision is aware of and understands this policy.~~ Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:1001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of the Secretary, LR 25:1147 (June 1999), amended by the Department of Social Services, Office of Management and Finance, LR 32:115 (January 2006), LR 35:967 (May 2009) ~~+~~, repealed LR 53:

§117. Violation of the Policy

~~A. Positive Test Result. All initial screening tests with positive results must be confirmed by a second more accurate test with the results reviewed by a medical review officer. Any breath test resulting in 0.08 alcohol concentration will be considered an initial positive result. In these cases, the confirmation test will be performed within 30 minutes, but not less than 15 minutes, of completion of the screening test. Urine samples will be tested using the split sample method, with the~~

~~confirmation test performed on the second half of the sample in the event of an initial positive result. Any employee reported with a confirmed positive test shall either be suspended with pay pending investigation or shall have the safety/security sensitive duties removed from his/her position pending preparation and approval of disciplinary action up to and including dismissal. At a minimum the following actions will be taken in the instance of a first confirmed positive test.~~

~~1. The employee shall be subject to disciplinary action as determined by the appointing authority.~~

~~2. The employee must meet with an approved chemical abuse counselor for a substance abuse evaluation. The employee must release the substance abuse evaluation prior to returning to duty. The evaluation will become part of the follow-up plan for that employee to continue employment with the department.~~

~~3. The employee shall be screened on a periodic basis for not less than 12 months nor more than 60 months. Follow-up testing, return to duty testing, counseling and any other recommended treatment will be at the cost of the employee and not the department. Post accident or return to duty tests which are positive will result in the employee's dismissal.~~

~~B. Refusal to Test~~

~~1. Any employee refusing to submit to a breath test for the presence of alcohol or a urine test for the presence of~~

~~drugs will be subject to the consequences of a positive test. A refusal is defined as a verbal refusal, abusive language to the supervisor or personnel performing the test, or tampering of any sample, container, equipment or documentation of the sampling process. If a test is determined to be invalid, it is not considered a refusal and no disciplinary action will be taken. Inability to perform the testing procedures must be documented by a medical physician and recorded in the employee's personnel file.~~

~~2. If an employee alleges that, because of medical reasons, he/she is unable to provide a sufficient amount of breath to permit a valid breath test, the Breath Alcohol Technician (BAT) will instruct the employee to try a second time to provide an adequate amount of breath. If an employee is unwilling to submit to the test, then the results of the test will be subject to the consequences of a positive test. If an employee is unable to provide a sufficient quantity of urine, the collector will discard the insufficient specimen and instruct the individual to drink up to 40 ounces of fluid, distributed reasonably through a period of up to three hours, or until the employee has provided a new urine specimen. If the employee remains unable to provide a sufficient specimen, the collector must discard the insufficient specimen, discontinue testing and notify the agency human resources director or~~

~~his/her designee of his/her actions. In these instances, the agency human resources director or his/her designee shall inform the appointing authority immediately. The appointing authority shall direct the employee to have a medical evaluation, within five working days (at the agency's expense) conducted by an agency selected licensed physician with expertise in the medical issues surrounding a failure to provide a sufficient specimen. The physician will provide to the appointing authority, a report of his/her conclusions as to whether the employee's inability to provide a sufficient specimen is genuine or constitutes a refusal to test. If the conclusion of refusal to test is reached, it will be subject to the consequences of a positive test.~~

~~C. Reasonable Suspicion of Adulterated/Substituted Sample. A specimen temperature that measures outside the range of 90 to 100 degrees Fahrenheit constitutes a reason to believe that an employee has adulterated or substituted the specimen. The collector must immediately conduct a new collection using direct observation procedures.~~

~~D. Challenging Test Results. If a current or prospective employee receives a confirmed positive test result, he/she may challenge the test results within 72 hours of actual notification, with the understanding that he/she may be placed on suspension pending investigation, until the challenge is~~

~~resolved. A written explanation of the reason for the positive test result may be submitted to the medical review officer.~~

~~Employees who are on legally prescribed and obtained medication for a documented illness, injury or ailment will be eligible for continued employment upon receiving clearance from the medical review officer.~~

~~E. Other Violations. Each violation and alleged violation of this policy will be handled on an individual basis, taking into account all data, including the risk to self, fellow employees, clients, and the general public.~~

~~F. Failure to comply with provision of the policy, including but not limited to, the following, will be grounds for disciplinary action:~~

~~1. an employee is subject to disciplinary action up to and including dismissal should a criminal drug statute conviction result from the unlawful manufacture, distribution, possession, or use of a controlled substance in the workplace;~~

~~2. refusal or failure to report to an approved counseling or rehabilitation program after voluntarily requesting help for drug addiction;~~

~~3. refusal or failure to report to an approved counseling or rehabilitation program, if advised by the department to do so, after a confirmed positive test for any substance prohibited by this policy;~~

~~4. leaving a treatment program prior to completion and not being properly released to return to work. Repealed.~~

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:1001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of the Secretary, LR 25:1147 (June 1999), amended by the Department of Social Services, Office of Management and Finance, LR 32:115 (January 2006), LR 35:968 (May 2009) ~~-, repealed LR 53:~~

§119. Attachment A-Safety-Sensitive and Security-Sensitive Positions within DSS

~~A. A candidate for one of the following positions will be required to pass a drug test before being placed in such a position, whether through appointment or promotion and employees who occupy these positions will be subject to random alcohol/drug testing.~~

Louisiana Rehabilitation Services	Administrative Specialist A (Position 060871) Client Services Worker Rehabilitation Aide
Office of Family Support	Social Services Analyst 1 & 2 (All positions in Support Enforcement) Social Services Analyst Supervisor (All positions in Support Enforcement) Support Enforcement District Manager 1 & 2 Support Enforcement Regional Administrator

Office of Community Services	Administrative Coordinator 3 (Positions in Field Services — Parish and Regional Offices) Administrator Coordinator 2 (Positions in Field Services — Parish and Regional Offices) Child Welfare Services Assistant Trainee Child Welfare Services Assistant Child Welfare Counselor/Adoption Child Welfare Specialist 1 Child Welfare Specialist 2 Child Welfare Specialist 3 Child Welfare Specialist 4 Child Welfare Specialist Trainee Social Service Counselor 1 Social Service Counselor 2
Office of the Secretary/Office of Management and Finance	Accountant 3 (178446) Administrative Coordinator 1 (002112, 002913) Administrative Coordinator 2 (001979) Auditor Supervisor (124684) Licensing Specialist 1 — DSS Licensing Specialist 2 — .DSS

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S.

49:1001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of the Secretary, LR 25:1148 (June 1999), amended by the Department of Social Services, Office of Management and Finance, LR 32:116 (January 2006) ~~—~~, repealed LR 53:

§121. Attachment B—Procedures for Scheduling Drug Testing

~~A. On a yearly basis a percentage of all DSS employees in safety-sensitive or security-sensitive positions will be~~

~~randomly drug tested. One twelfth of that number will be scheduled each month.~~

~~1. A computerized system will randomly select a designated number of employees.~~

~~2. Each month the appropriate managers will be notified by human resources of the names of employees in their office location randomly selected to be drug tested. The names of employees to be tested must be kept confidential at all times.~~

~~3. Based on each individual employee's schedule, at the earliest possible date within the designated month, the appropriate manager will notify the employee in writing first thing in the morning that they must report to a designated lab for testing. Human resources must be notified if an employee is on extended leave.~~

~~4. Each employee must go to the designated lab within 24 hours of being notified.~~

~~5. The office human resources personnel will be notified of the results of the tests. All test results must be kept confidential and retained in a locked file cabinet.~~Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:1001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of the Secretary, LR 25:1148 (June 1999), amended LR 35:968 (May 2009) ~~÷~~, repealed LR 53:

Family Impact Statement

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. It is anticipated that this proposed Rule will not have an impact on family functioning, stability, and autonomy as described in R.S. 49:972.

Poverty Impact Statement

In compliance with Act 854 of the 2012 Regular Session of the Louisiana Legislature, the poverty impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will not have an impact on child, individual, or family poverty in relation to individual or community asset development as described in R.S. 49:973.

Small Business Analysis

In compliance with the Small Business Protection Act, the economic impact of this proposed Rule on small businesses has been considered. It is anticipated that this proposed Rule will not have a fiscal impact on small businesses.

Provider Impact Statement

In compliance with House Concurrent Resolution (HCR) 170 of the 2014 Regular Session of the Louisiana Legislature, the

provider impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will not have a fiscal impact on providers.

Public Comments

Interested individuals may submit written comments to Catherine S. Brindley, DCFS Policy and Rulemaking Director, Department of Children and Family Services, P.O. Box 3776, Baton Rouge, LA 70821. The deadline for submitting written comments is 4:30 p.m. on September 9, 2026.

Christopher Bahm

Undersecretary