

Case for Hair Testing

- Trucking companies began hair testing 15 years ago
- Results in science and safety were compelling to Congress for commercial vehicle testing
- FAST Act – bipartisan, bicameral support for mandated rule
 - Passed House and Senate 12/03/2015 and Enacted 12/04/2015
- Section 5402:
 - Required DOT to promulgate regulations to “permit motor carriers ... to use hair testing ***as an acceptable alternative to urine testing***” for purposes of the commercial driver drug testing program. 49 U.S.C. § 31306(b)(1)(B)(ii).
 - Required HHS to “issue scientific and technical guidelines for hair testing as a method of detecting the use of a controlled substance for purposes of” the commercial driver drug-testing program, within one year of enactment.

Hair Testing Background

- Safe, proven method to measure the regulatory requirement of drug “use”
 - Longer testing window than urinalysis
 - Evasion, a major problem with urinalysis, is much more difficult
- 1.3 million tests per year by Fortune 500 companies and small ones
- On average, trucking companies that adopt hair testing for prohibited drugs often see declines in their DOT random drug testing positivity rate by 45%.

Stepwise action by HHS, then DOT

- HHS required to provide scientific and technical guidelines on which the required DOT regulatory changes can be based. See 49 U.S.C. 31306 (c)(2) (requiring DOT to incorporate HHS scientific and technical guidelines in designing its commercial driver drug-testing program).
- More than 3 years late by HHS – Sent to OMB in June of 2019
- ASK: That HHS publish guidelines that treat hair testing as an *alternative* to urinalysis, as required by statute, not recycle dated questions that have satisfactory scientific answers.

The Scientific Case for Hair Testing

- Longer detection window:
 - Urinalysis typically detects drug use within 3-7 days; hair testing, 90 days. Thus, with hair testing, it is more difficult for habitual users to “game” their pre-employment drug test—the key factor in keeping drug users from behind the wheel in the first place—by simply refraining from use for a relatively short period.
- Sample collection simpler, evasion through sample substitution impossible
 - Under the current urinalysis-only regime, drivers routinely subvert the system by substituting synthetic or other urine for an accurate sample.
- Advantages of hair testing particularly urgent today
 - Opioid crisis
 - Increase in state-level decriminalization of recreational or medical cannabis use, which remains prohibited under federal law and DOT rules

The Scientific Case for Hair Testing (cont.)

- Hair analysis does not discriminate
 - Early in the history of hair testing, there was some concern that it would produce disproportionately positive results for some ethnic groups, based on the fact that alkaloids—including cocaine and amphetamines—are prone to bind with melanin, which in turn is more prevalent in dark hair.
 - Current studies, however, show that there is no disparate positive rate relative to urinalysis.
 - In a 2020 study by the University of Central Arkansas, found that drivers represented by the Black and Multiple ethnic groups passed at the lowest rate, which was 95.5% of the ethnic group with the highest passing rate. However that percentage exceeds the required 77% Four-Fifths Rule threshold to show racial disparities.
 - Hair testing methods have evolved to eliminate the possibility of disparate results—HHS can and should ensure that its technical guidelines select such methods.

Costs

- Estimated cost of duplicative urinalysis ahead of the HHS and DOT rule is more than \$3.6 million per year.
 - What input do urinalysis labs have with HHS-SAMHSA testing staff?
- Surveys of smaller ATA carriers routinely show that they hope to improve safety and costs (insurance, litigation), but currently, small carriers can't afford the duplication with urinalysis.
- Safety costs – impaired drivers are vital to keep from operating commercial vehicles if we are to bring accidents, injuries and fatalities down significantly. Delaying this rule is a victory for plaintiff's attorneys.
- Drug Clearinghouse efficacy will be much stronger by being able to receive hair testing results and restrict drug users from finding another carrier until they are rehabilitated.

REQUESTS

- Have HHS complete the guidelines for the statutorily-mandated “alternative,” not a dual process that continues to require urinalysis. Science supports hair testing.
- Ensure a rulemaking doesn’t move publicly forward with questionable claims, possibly by urinalysis testing labs, casting false doubts on racial or other disparities.
- Finalize lab standards by HHS to guide laboratories to acceptable standards to guide adoption of most effective, sound, scientific practices for achieving the enacted mandate – an alternative testing method.