

## DHHS POLICIES AND PROCEDURES

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<b>Section V:</b>	<b>Human Resources</b>
<b>Title:</b>	<b>Safety and Benefits</b>
<b>Chapter:</b>	<b>Alcohol and Drug Free Workplace</b>
<b>Current Effective Date:</b>	<b>9/21/16</b>
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### **Purpose:**

To establish department policy on the maintenance of an alcohol and drug free workplace and to provide guidelines for handling job performance issues related to alcohol and drug use.

### **Policy:**

#### **The Department Policy Covers:**

1. A reasonable-cause drug testing program for department employees when there is cause to believe an employee is abusing drugs or is impaired on the job.
2. A pre-employment drug testing program for all applicants for initial hire and/or transfer to positions at Department of Health and Human Services (DHHS) divisions/facilities that are certified by the North Carolina Criminal Justice Education and Training Standards Commission.
3. A pre-employment drug testing program for all selected applicants for positions in the divisions which are considered direct-care positions.
4. A pre-employment, random, reasonable cause, post accident, and return-to-duty drug testing program for all selected applicants and employees who are required to possess a commercial drivers license (CDL) in the performance of their job.
5. A pre-employment drug testing program for all positions in the Division of State Operated Healthcare Facilities (DSOHF).
6. A random drug testing program for positions identified by the Director of the Division of Human Resources (HR).
7. A random drug testing program for employees that return to duty following a mandatory Employee Assistance Program (EAP) referral for substance abuse.

## Definitions:

1. **Applicant** - A person, who applies for employment or appointment to a Criminal Justice Certified Position, a direct-care position, a CDL position, a position in DSOHF, a person who volunteers in a direct care role or a student who provides direct care service.

Note: Volunteer/student applicants will not be subject to drug testing if they are providing non direct care service and volunteer/student applicants seeking to observe and/or work under close supervision. Drug testing is performed on those expected to have independent time with one or more clients, patients, students and wards of the Department.

2. **Certified Laboratory** - A lab certified under the U.S. Department of Health and Human Services that has mandatory guidelines for federal workplace drug testing programs.
3. **Collection Site** - A designated place where employees present themselves to provide, under controlled conditions, urine or breathe specimen which will be analyzed for the presence of drugs or alcohol.
4. **Collection Site Personnel** - A person who instructs and assists individuals in the collection of the requested specimen for drug and/or alcohol testing under specific protocol.
5. **Confirmed Positive Result** - The presence of an illicit substance in the pure form or its metabolites at or above the specified cutoff level identified on two (2) consecutive tests which employ different testing methods.
6. **Confirmation Test** - A second analytical procedure used to identify the presence of a specific drug or metabolite in a specimen. The confirmation test must be different in scientific principle from that of the initial test procedure. At this time gas/chromatography/mass spectrometry (GC/MS) shall be used.
7. **Consent and Acknowledgment Forms** - The Applicant Consent and Acknowledgement Form, Consent and Acknowledge Form for Random Testing and Reasonable Cause, Consent and Acknowledge Form for CDL Applicant and CDL Random and Criminal Justice Drug Test Applicant Consent Form\_provide consent for testing and informs the applicant/employee of substances being tested.
8. **Controlled Substance** - A controlled substance in schedules I through V of Section 202 of the Controlled Substances Act ([21 U.S.C. 812](#)) and as further defined by regulation at [21 CFR 1308.11 through 1308.15](#). Major substances for review by this policy shall include: marijuana/cannabinoids (THC); cocaine metabolites; opiates; phencyclidine (PCP); amphetamines/methamphetamines; methadone; barbiturates; benzodiazepines and tricyclic antidepressants.

9. **Conviction** - A finding of guilt (including a plea of Nolo Contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the federal or state criminal drug statutes.
10. **Criminal Drug Statute** - A federal or non-federal criminal statute involving the manufacture, distribution, dispensing, use or possession of any controlled substance.
11. **Drug Test** - A chemical, biological or physical analysis or test administered for the purpose of determining the presence or absence of a drug or its metabolites and/or alcohol.
12. **Impaired** - Shall mean such performance and/or behavior which would indicate to the observer that the employee's ability to handle job assignments safely and efficiently may be compromised.
13. **Initial Drug Test** - A sensitive, rapid, and reliable immunoassay procedure to identify negative and presumptive positive specimens.
14. **Medical Review Officer** - A licensed physician whose duties include the review and interpretation of positive results from confirmatory testing and who evaluates those results together with medical history or any other relevant biomedical information to verify positive results. This person has knowledge of substance abuse disorders and appropriate medical or forensic training.
15. **Negative Result** - The absence of an illicit substance in the pure form or its metabolites in sufficient quantities to be identified by either an initial screen or confirmatory test or as determined by a Medical Review Officer.
16. **Post Accident Test** - A test conducted following all accidents involving motor vehicles requiring the operation by personnel having a CDL driver's license where there was a loss of life or where the CDL driver receives a moving citation as a result of the accident.
17. **Random Drug Test** - A test performed according to annually established rates by the federal government on personnel needing CDL licensing to perform driving duties. Employee selection is randomly generated from a list of eligible employees. In addition, a drug test performed according to rates established by the Department on positions identified by the Director of the Division of HR.
18. **Reasonable Cause Drug Testing** - Testing based on a belief that an employee is using or has used alcohol or drugs in violation of the department's policy based on specific objective and articulable facts and reasonable inferences. Such facts and inferences may be based on, but not limited to, any of the following:

- A. Direct observations of abnormal conduct or erratic behavior by the employee which may render the employee unable to perform assigned duties or which may pose a threat to safety or health.
  - B. A report of alcohol or drug use provided by a reliable and credible source.
  - C. An on-the-job accident or occurrence where there is evidence to indicate the accident or occurrence, in whole or in part, may have been the result of the employee's use of a controlled substance or alcohol.
  - D. Evidence that an employee is involved in the use, possession, sale, solicitation or transfer of drugs or alcohol while working, while on the employer's premises when off duty or while operating the employer's vehicle, machinery, or equipment.
  - E. The employee's conviction of a criminal drug or alcohol statute violation within the past year.
19. **Refusal To Submit** - to an Alcohol or Drug test: The failure of an employee to provide an adequate breath or urine specimen upon request for testing without a valid medical explanation or unreasonable conduct which clearly interferes with the testing process.
20. **Release of Information Form** - Outlines the information that will be released to management from an Employee Assistance Program referral.
21. **Substance Abuse Professional** - Licensed physicians, as well as licensed or certified psychologists, social workers, employee assistance professionals, and alcohol and drug counselors certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission (NAADAC) to assess or evaluate an employee who has engaged in prohibited alcohol or drug conduct.
22. **Verified Positive Result** - The positive result reported by a Medical Review Officer after the assessment of collection and testing protocols and a determination of no alternate medical explanation for the presence of the controlled substance.

**Pre-Employment Actions:**

1. All offers for positions requiring pre-employment drug testing shall be conditional offers upon satisfactory test results.
2. A refusal to submit, fail to show or tampering with a sample or a positive test result that cannot be explained to the satisfaction of the Medical Review Officer and the employing agency shall result in the offer of employment or continued employment service being withdrawn.
3. A Refusal to submit to a drug test or a positive test result that cannot be explained to the satisfaction of the North Carolina Criminal Justice Education and Training Standards Commission on criminal justice positions may result in suspension, revocation or denial of certification for the individual involved for a period of not less than five years. When

the Commission suspends or denies the certification, the period of sanction shall not be less than five (5) years; however, the Commission may either reduce or suspend the period of sanction or substitute a period of probation in lieu of suspension of certification.

4. If the drug test produces a negative result, then proceed with the employment process.
5. If the drug test produces a positive result, notify the applicant of such and that the conditional offer of employment/service is being withdrawn. If an employee produces a positive result drug test, then follow the disciplinary guidelines as outlined in this policy. If this is a criminal justice position, inform the person that he/she may be ineligible to hold certified positions. Retain documentation of the positive laboratory result and report the result to the Criminal Justice Standards Division and inform the applicant of appeal rights.
6. Employees holding positions certified under the Criminal Justice Education and Training Standards shall notify their immediate supervisor when required to use prescription medicine that they have been informed has the potential to impair job performance. The employee shall advise the supervisor of the known side effects of such medication as well as the prescribed period of use. Supervisors shall document this information through use of an internal memorandum and maintain this memorandum in a secure file. The employee may be temporarily reassigned to other duties where appropriate.
7. In cases which involve possible manufacture, distribution, dispensing, selling, or possession of controlled substances at the workplace, the division/facility/school director or designee should contact the local law enforcement agency and the State Bureau of Investigation for assistance.
8. All drug and alcohol test results will be maintained in a secure and confidential manner in the employee's personnel file and will not be released without written consent of the applicant or employee except as a result of action initiated by or on behalf of the applicant or employee. Test results are to be maintained for the life of the employment.

**Employment Actions:**

1. Management is committed to providing an alcohol and drug free workplace for all employees of the DHHS.
2. The unlawful manufacture, distribution, dispensation, sale, possession or use of controlled substances; the unlawful use of prescription drugs; the possession or use of alcoholic beverages; and the possession of and manufacture or delivery of drug paraphernalia is prohibited on department premises and workplaces. The department maintains a zero tolerance position on the above issues.

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3. Violation of the policy established in item 2 above and/or alcohol or controlled substance impaired behavior on the job shall be viewed as unacceptable personal conduct and shall be cause for disciplinary action up to, and including, dismissal.
4. An employee determined, by administrative or other investigation, to be involved in the manufacture, distribution, dispensation or sale of a controlled substance or alcohol on department premises or workplaces shall be dismissed.
5. An employee determined to be in possession of alcohol or illegal possession of a controlled substance as well as, possession of and involved in the manufacture or delivery of drug paraphernalia on department premises or workplaces shall receive at least a written warning and may be required to participate in the department's Employee Assistance Program.
6. An employee determined to be using or under the influence and/or functioning below acceptable work standards due to alcohol or a controlled substance or unlawful use of prescription drugs on department premises or workplaces shall receive at least a written warning and if not released shall be referred to the department's Employee Assistance Program.
7. The department will report violations of criminal drug statutes occurring in the workplace to the appropriate law enforcement authority.
8. An employee that is arrested, charged or convicted of any criminal drug or alcohol statute violation must notify the supervisor no later than (5) five calendar days after such occurrence. Failure to provide notification may result in disciplinary action, up to, and including, dismissal. When required by the Federal Drug-Free Workplace Act of 1988, department management shall notify the appropriate federal contracting agency of such a conviction.
9. Management, in accordance with Employee Assistance Program principles, will support the responsible action of an employee seeking help for an alcohol or controlled substance problem. An employee's efforts to obtain help through the department will be handled in confidence.
10. Every employee shall receive orientation on this policy and documentation shall be maintained by the agency to support that this occurred.
11. All employees have a responsibility to report observed and suspected violations of this policy to their supervisor or department management.
12. The Director of the Division of HR is assigned responsibility and authority to establish supplemental policies and procedures necessary for the implementation and administration of this policy.

- A. The director shall coordinate the department's alcohol and drug abuse awareness programs.
  - B. The director has assigned responsibility to the Assistant HR Director to oversee the department program and to review the department's good faith effort in this area and to consider proposed changes and/or additions to the policy as may be needed.
13. Disciplinary action, in the form of a written warning, disciplinary suspension without pay, demotion or dismissal, shall be taken when an employee:
- A. Refuses to submit to a required drug or alcohol test,
  - B. Fails to show for a scheduled drug or alcohol test,
  - C. Intentionally tampers, or attempts to tamper, with a drug or alcohol sample, or
  - D. Produces a confirmed positive alcohol test or a verified positive drug test.
14. Substances that may be tested for under this policy include:
- A. Marijuana/cannabinoids (THC),
  - B. Cocaine metabolites,
  - C. Opiates,
  - D. Phencyclidine (PCP),
  - E. Amphetamines/methamphetamines,
  - F. Alcohol,
  - G. Methadone,
  - H. Barbiturates,
  - I. Benzodiazepines
  - J. Tricyclic antidepressants

Note: Substances to be tested for can be expanded only for cases in which Reasonable Cause identifies a need to test for a substance. Employees must be informed of the substances of which they will be tested. All requests to expand testing must be coordinated through the Departments Employee Safety and Benefits section.

15. An employee who produces a confirmed positive alcohol test or a verified positive drug test, if not dismissed, shall receive at least a written warning and before the employee is eligible to return to duty, must:
- A. Undergo an evaluation or assessment by a Substance Abuse Professional through the Employee Assistance Program,

- B. Satisfactorily complete any rehabilitation process that is recommended through this assessment,
  - C. Successfully complete any return to duty requirements which will include a return to duty DOT drug/alcohol test, and
  - D. Successfully undergo follow-up testing within the first 12 months of returning to work at the direction of management and the Employee Assistance Program.
16. An employee/applicant who receives a positive drug test may request through the Medical Review Officer the same or split specimen be tested at another certified laboratory with the cost of such testing at the employee's/applicant's expense. Notification for re-testing of a sample must be made within 72 hours upon the employee/applicant receiving written notice of a positive test result.
  17. Applicants or employees with a confirmed positive test will be afforded the opportunity to appeal the results. This is accomplished by providing medical data/history for review and assessment by the Medical Review Officer who will make a final determination of the test result.
  18. Employees who are dismissed may be referred to the Employee Assistance Program for evaluation or assessment.
  19. An employee who tests positive in a second drug or alcohol test shall be dismissed.
  20. Should an applicant test positive, they will not be allowed to reapply for employment/service for a period of six (6) months from the date of the test result

**In addition to the above, the following is applicable:**

Mandatory drug testing shall apply to:

1. Final applicants for employment in positions requiring certification under the criminal justice standards.
2. Veteran law enforcement officers and local confinement personnel who apply for lateral transfer to another law enforcement agency or who apply for reinstatement.
3. Final applicants for employment in positions identified by the Department as direct care positions.
4. Final applicants for employment in positions requiring a CDL) to perform the job.
5. Final applicant for employment within the DSOHF.



6. Unannounced random testing for employees in a CDL position based upon rates published by the federal government and spread reasonably throughout the year.
7. Unannounced random drug testing for employees in positions identified by the Director of the Division of HR that have been publicly communicated to.
8. CDL drivers involved in a vehicular accident involving loss of human life or where the CDL driver receives a moving citation as the result of the accident. Testing shall be conducted as soon as possible but no later than eight (8) hours following the event.
9. Employees suspected of drug or alcohol abuse at work when there is reasonable cause.
10. Employees returning from a mandatory EAP referral program.

**Testing Actions:**

1. Drug Screen testing shall take place during the application process. The test conducted shall not be more than 60 days old calculated from the time when the laboratory reports the results to the date of employment/service.
2. In order to maintain the effectiveness and reliability of the drug testing process, applicants/employees should not be given more than 24 hour advance notice of the testing date and time.
3. Employees subject to random testing shall be chosen randomly by the testing contractor. The contractor shall notify the division/facility HR manager of the employees selected for testing. The HR manager shall arrange for employee testing immediately following notification.
4. Prior to testing an applicant or lateral transfer for a criminal justice position, the HR manager shall submit a records search request to the Criminal Justice Standards Division to determine if the applicant or lateral transfer has previously produced a positive test result or refused to submit to drug testing.
5. When management has reasonable cause to believe an employee is abusing or is under the influence of alcohol or a controlled substance in violation of this policy, the employee may be required to submit to a drug and/or alcohol test.
  - A. All tests conducted for reasonable cause must have the division/facility director or their designee's approval.
  - B. The supervisor, with the HR manager shall inform the employee that as a condition of employment, management has the right to ask him/her to submit to a drug or alcohol test.

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- C. The employee shall be advised of the: basis for the reasonable cause; methods of testing which may be used; substances which may be identified; importance of cooperating with the collection site personnel; confidentiality of individual test results; appeals process through a Medical Review Officer following a confirmed positive drug test; and the consequences of refusing to sign consent forms, failing to submit to testing, failing to report for a specimen collection, or receiving a verified positive test result or confirmed positive alcohol test.
- D. The HR manager shall initiate a testing process as soon as possible. The employee shall be given verbal notification of the time, date and location of the test and be required to sign a consent and acknowledgment form. The employee is given a copy of the form and a copy is placed in the employee's personnel file.
- E. If the employee refuses to sign the consent form or to undergo testing as scheduled, the supervisor shall take disciplinary action upon consultation with the HR manager in accordance with department policy.
- F. If a non-positive test result occurs, the employee shall be notified immediately by the HR manager. All records surrounding this incident shall be removed from the employee's personnel file. If the test is positive, the director, within five (5) days of receiving positive test confirmation, shall inform the employee in writing of the results and proposed action to be taken.
- G. The employee who tests positive, if not dismissed, shall be required to participate in the department's Employee Assistance Program. The HR manager shall contact the Employee Assistance Program consultant to schedule an appointment for the employee. The employee shall be given verbal notification of the date, place and time of the session.
- H. The employee shall be required to sign and date a Release of Information form when seen by the Employee Assistance Program consultant. A copy of this form shall be given to the employee and a copy retained by the EAP Consultant. This form shall permit the HR manager to be informed on: whether the employee reported for the initial session; whether the employee is engaged in a treatment program; and whether the employee successfully completed the recommended course of treatment.
- I. The employee will be granted leave to participate in an appropriate and approved education or treatment program. The employee will be allowed to use accumulated sick and vacation leave or leave without pay.
- J. Upon successful completion of the Employee Assistance Program recommended course of action, the employee will be returned to the work unit after approval by the HR manager.

- K. The employee, upon return to the work unit, may be subject to after care testing during a twelve month period following return.
- L. Disciplinary actions resulting from a confirmed positive test result, refusal to participate in a test, altering results or failure to complete a required referral to an education or treatment program shall be handled in accordance with established department and state personnel policy for disciplinary action.

*For questions or clarification on any of the information contained in this policy, please contact [Human Resources](#). For general questions about department-wide policies and procedures, contact the [DHHS Policy Coordinator](#).*

