

VA DRUG-FREE WORKPLACE PROGRAM

- 1. REASON FOR ISSUE:** To issue Department of Veterans Affairs (VA) policy regarding VA's Drug-Free Workplace Program.
- 2. SUMMARY OF CONTENTS/MAJOR CHANGES:** This directive provides Department-wide policy on VA's Drug-Free Workplace Program, and contains:
 - a. Information on the nature, frequency, and type of drug testing to be instituted;
 - b. Responsibilities for implementing and managing the program;
 - c. References used in developing the directive and handbooks; and
 - d. Definitions of key positions and terms used in the directive.
- 3. RESPONSIBLE OFFICE:** The Employee Relations and Performance Management Service (051), and the Office of the Deputy Assistant Secretary for Human Resources Management and Labor Relations.
- 4. RELATED HANDBOOK:** VA Handbook 5383, VA Drug-Free Workplace Program.
- 5. RESCISSIONS:** VA Directive 5383, dated April 11, 1997.

CERTIFIED BY:

**BY DIRECTION OF THE SECRETARY
OF VETERANS AFFAIRS**

/s/Robert N. McFarland
Assistant Secretary for
Information and Technology

/s/R. Allen Pittman
Assistant Secretary for
Human Resources and Administration

ELECTRONIC DISTRIBUTION ONLY

VA DRUG-FREE WORKPLACE PROGRAM

1. PURPOSE. This directive provides Departmental policy for VA's Drug-Free Workplace Program (DFWP), certified by the Department of Health and Human Services on April 27, 1988, in accordance with Public Law 100-71, and provides instructions for implementing those provisions relating to the drug testing of employees and applicants for VA employment. Procedures for implementing the policies in this directive are found in [Parts I and II of VA Handbook 5383].

2. POLICY

a. General

(1) The Department of Veterans Affairs provides benefits and services to the Nation's almost 28 million veterans and their dependents, and manages the Nation's largest medical system and veterans' benefits system. In order to carry out its missions of providing quality medical care on a timely basis to all eligible veterans, providing benefits to eligible veterans and beneficiaries, and ensuring that memorial affairs are conducted with honor and dignity, agency operations are divided according to their major functions into three administrations: Veterans Health Administration (VHA), Veterans Benefits Administration (VBA), and the National Cemetery [Administration (NCA)]. In addition, Assistant Secretary offices [were] established in order to provide advice and assistance to the Secretary and senior management.

(2) [] VA employees represent a broad spectrum of positions including: those responsible for direct patient care; support positions; firefighters; and police officers. Drug usage by VA's health care staff, such as physicians, dentists, nurses, pharmacists, therapists, and medical machine and laboratory technicians, could result in the loss of patients' lives or patient injury. Drug usage by other VA employees, such as motor vehicle operators, firefighters, and police officers, could also result in loss of life or injury, and damage to or destruction of property.

(3) In the conduct of its missions, VA deals with highly sensitive information on medical conditions, educational and employment histories, financial statements and other personal data on many people. Unauthorized release of such information could be detrimental and embarrassing to individuals concerned and subject VA to legal suits. Also, this information could be used to gain financial advantage. A high degree of integrity is required of VA employees to assure that this sensitive information is used only for legitimate purposes.

(4) In view of the sensitive nature of its work and the fact that Department programs have an enormous impact on the lives of millions of Americans, VA has a compelling obligation to eliminate illegal drug use from its workplace. An essential element in assuring a drug-free workplace is drug testing. VA's plan will include provisions for mandatory and voluntary drug testing consistent with all scientific and technical guidelines for drug testing programs promulgated by the Department of Health and Human Services (HHS).

(5) It is VA policy that its workplace be free from illegal use, possession, or distribution of controlled substances, as specified in Schedules I through V, as defined in 21 U.S.C. 802(6) and listed in Section 812 of that Title by the officers and employees of VA. The possession and distribution of

controlled substances will be dealt with promptly in accordance with legal and administrative disciplinary procedures. However, the policy's primary goal is to ensure that illegal drug use is eliminated and that the VA workplace be safe, healthful, productive, and secure.

(6) The mark of a successful drug-free workplace program also depends on how well VA can inform its employees of the hazards of drug use, and on how much assistance it can provide to drug users. Equally important is the assurance to employees that personal dignity and privacy will be respected in reaching VA's goal of a drug-free workplace. Therefore, this plan includes policies and procedures for: (a) employee assistance; (b) supervisory training (c) employee education; and (d) identification of illegal drug use through drug testing on a carefully controlled and monitored basis.

(7) Specimen Collection Procedures

(a) Collection of all urine specimens under VA's DFWP will be performed in accordance with the Guidelines published in the Federal Register by HHS on April 11, 1988 (revised June 9, 1994), and any amendments of or revisions to those guidelines.

(b) Specimen collection will generally be performed by designated VA laboratory personnel. Collection site personnel will be selected by Pathology and Laboratory Medicine Service Chiefs.

(c) VA medical facilities will provide specimen collection services for Regional Offices, National Cemeteries, and other VA field facilities, as well as for their own facility. (Special procedures will be communicated to the Regional Offices in Honolulu, HI, and Anchorage, AK, and the Austin Automation Center in Austin, TX).

(d) Specimen collection procedures are provided in [Part II to] VA Handbook 5383[], Urine Drug Testing: Collection and Transportation of Urine Specimens.

b. Nature, Frequency, and Type of Drug Testing

(1) The VA Plan includes the following types of drug testing: (a) applicant testing; (b) random testing monthly of sensitive employees in testing designated positions (c) reasonable suspicion testing; (d) injury, illness, unsafe, or unhealthful practice testing; (e) voluntary testing; and (f) testing as part of or as a follow-up to counseling or rehabilitation.

(2) Random and pre-employment testing will be conducted on a monthly basis.

c. Drugs for Which Individuals Are Tested. VA will test for marijuana, cocaine, opiates, amphetamines, and phencyclidine (PCP) as part of the Department's pre-employment and random drug testing program. When conducting reasonable suspicion, injury, illness, unsafe, or unhealthful practice testing, VA may test for any drug identified in Schedule I or II of the Controlled Substances Act (21 USC 812).

d. Labor-Management Partnership. The active participation and support of recognized labor organizations can contribute to the success of this program. VA management officials will continue to seek ways to involve bargaining unit representatives in the positive implementation of this program. VA management will observe all labor management agreements reached and meet its obligations under Title VII of the Civil Service Reform Act of 1978, PL 95-454.

3. RESPONSIBILITIES

a. **Administration Heads, Assistant Secretaries, Other Key Officials, Deputy Assistant Secretaries, and field facility Directors.** Administration heads, Assistant Secretaries, Other Key Officials, Deputy Assistant Secretaries, and field facility Directors are responsible for the implementation of the VA Drug-Free Workplace Program within those organizations over which they have jurisdiction.

b. **Under Secretary for Health.** The Under Secretary for Health is responsible for:

(1) Development and issuance of laboratory protocols and accreditation requirements in accordance with HHS guidance;

(2) Issuance of directives, as needed, to VA facility laboratories regarding specimen collection, chain of custody and transportation procedures in accordance with HHS guidelines;

(3) Identification of any VA lab/labs that will conduct both screening and confirmation testing in accordance with HHS guidelines; and

(4) Appointment of a Headquarters Medical Review Officer (MRO) in accordance with HHS Guidelines and this Program. The Headquarters MRO will be responsible for carrying out the duties and responsibilities of that position for all Headquarters employees and all field facility Directors.

c. **Assistant Secretary for [Management, Office of] Human Resources and Administration.** The Assistant Secretary for [Management, Office of] Human Resources and Administration is responsible for:

(1) Upon the request of the Deputy Assistant Secretary for Human Resources Management, reviewing an appeal of a decision to designate a position as a testing designated position.

(2) Approving the designation of a position for random drug testing.

d. **Deputy Assistant Secretary (DAS) for Human Resources Management.** The DAS for Human Resources Management is responsible for the overall administration of the VA Drug-Free Workplace Program including developing and recommending administrative policies and procedures, and providing guidance and assistance on the implementation of the program. In addition, the DAS for Human Resources Management is responsible for periodically evaluating the effectiveness of the program and for recommending necessary modifications as appropriate. Responsibilities include:

(1) Development and control of a random selection process in consultation with the Deputy Assistant Secretary for Financial Management on sampling methodology.

(2) Development of procedures for ensuring the confidentiality, maintenance, and disposition of records; and

(3) Providing advice and guidance to management officials regarding Employee Assistance Programs (EAPs), supervisory training, employee education and appropriate disciplinary actions under the VA Drug-Free Workplace Program.

e. **Office of the DAS for Security and Law Enforcement.** The Security Office, located under the DAS for Security and Law Enforcement is responsible for:

(1) Continuously identifying those incumbents who occupy positions designated as Special Sensitive or Critical Sensitive or have access to classified national security information;

(2) Suspending or revoking eligibility **to occupy** positions designated **Special Sensitive, Critical Sensitive and/or have access to classified national security information**, of all employees who are verified positive for drug usage; and

(3) Conducting investigations into any reported breaches of security related to the safekeeping of records, listings, etc., in connection with the VA Drug-Free Workplace Program.

f. **Office of the General Counsel.** The Office of the General Counsel is responsible for serving as the point of contact for resolution of legal inquiries related to the VA Drug-Free Workplace Program.

g. **Field Facility Directors:** field facility Directors will:

(1) Appoint a Medical Review Officer (MRO) in accordance with HHS Guidelines and this Program. The MRO at each VHA facility is responsible for performing the requirements of that position for all employees for which the facility laboratory collects urine specimens.

(2) Ensure the security of listings of employees identified for random testing and are responsible for the scheduling of employees for testing. The Director may designate one other person to have access to the listing and responsibility for the scheduling of tests.

(3) Ensure that employees in sensitive positions at their facilities receive individual specific notices no later than thirty (30) days before testing commences.

4. REFERENCES

a. Executive Order 10450, Security Requirements for Government Employees;

b. Executive Order 12564, Drug-Free Federal Workplace;

c. Executive Order 12968, Access to Classified Information;

d. Mandatory Guidelines for Federal Workplace Drug Testing Programs which includes Scientific and Technical Requirements and Certification of Laboratories Engaged in Urine Drug Testing, 53 Federal Register 11979 (April 11, 1988), as revised in 59 Federal Register 29916 (June 9, 1994);

e. Public Law 95-454, the Civil Service Reform Act of 1978;

f. Public Law 99-570, the Federal Employees Substance Abuse Education and Treatment Act of 1986, Section 6004(a), codified at 5 U.S.C. 7904, "Employee assistance programs relating to drug abuse and alcohol abuse";

g. Section 503 of the Supplemental Appropriations Act of 1987, Public Law 100-71, 101 Stat. 391, 468-471, codified at Title 5 United States Code (U.S.C.) §7301 note (1987);

h. VA Directive and Handbook 0710, “Personnel Suitability and Security Program;”

i. VA Handbook 5005, Part II, Chapter 2, and 5 CFR parts 315 and 316, Employment in the Competitive Service;

j. VA Handbook 5011, Part III, Absence and Leave;

k. VA Handbook 5019, Part VI, Employee Assistance Program;

l. VA Handbook 5021, Parts I and II, Disciplinary and Adverse Actions;

m. VA Handbook 5021, Part III, Probationary Period;

n. VA Handbook 5021, Part IV, Disciplinary and Grievance Procedures;

o. 5 CFR Part 732, National Security Positions;

p. 5 CFR Part 752, Adverse Action;

q. 5 U.S.C. 7103(a)(10) and (11);

r. 5 U.S.C. 8331 (20);

s. 5 U.S.C. 8401 (17);

t. 5 U.S.C. Section 552a, The Privacy Act of 1974, prescribing requirements governing the maintenance of records by agencies pertaining to the individual(s) and access to these records by the individual(s) to whom they pertain;

u. 5 U.S.C. Subchapter VI of Chapter 73;

v. 21 U.S.C. 802(6);

w. 21 U.S.C. 812, Schedule of Controlled Substances;

x. 38 CFR § 1.575-1.584, implementing the Privacy Act of 1974 within VA;

y. 42 CFR Part 2, Confidentiality of Alcohol and Drug Abuse Patient Records; and

z. 42 U.S.C. 290dd.

5. DEFINITIONS

a. **Applicant.** Any individual tentatively selected for employment in a Testing Designated Position (TDP) with VA, and includes any individual in VA who has tentatively been identified for placement in

a TDP and who has not, immediately prior to the placement, been subject to random testing and any individual serving on a temporary appointment who has applied for and been tentatively selected for conversion to permanent appointment in a TDP.

(Note: all health professions interns, residents, fellows, students and trainees are the only groups of candidates for TDPs who are excluded from testing as applicants).

b. **Employee Assistance Program (EAP).** The VA-based counseling program that offers assessment, short-term counseling, and referral services to employees for a wide range of drug, alcohol, and mental health problems, and monitors the progress of employees while in treatment. The VA's EAP policy is contained in VA [Handbook 5019, Part VI.]

c. **Employee Assistance Program Administrator.** The DAS for Human Resources Management, or designee, who is responsible for ensuring the development, implementation and review of the Department EAP.

d. **Employee Assistance Program Coordinator.** The individual designated by the facility Director (or the DAS for Human Resources Management at VA Central Office) responsible for implementing and operating the EAP at the facility, by providing counseling, treatment, and education services to employees and supervisors regarding the facility EAP.

e. **Employees in Sensitive Positions are:**

(1) Employees in positions designated by the Secretary as Critical/Special Sensitive or employees in positions designated by the Secretary as sensitive in accordance with Executive Order 10450, as amended;

(2) Employees granted access to national security classified information or who may be granted access to national security classified information pursuant to a determination of trustworthiness by the Security Office under Section 3.1 of Executive Order 12968 and 5 CFR, Part 732;

(3) Individuals serving under Presidential appointments;

(4) Law enforcement officers as defined in 5 U.S.C. §§ 8331(20) and 8401(17); or

(5) Other positions that the Secretary determines involve law enforcement, national security, the protection of life and property, public health or safety.

f. **Illegal Drugs.** A controlled substance included in Schedule I or II, as defined by section 802(6) of Title 21, U.S.C., the possession of which is unlawful under chapter 13 of that Title. The term illegal drug does not mean the use of a controlled substance pursuant to a valid prescription or other uses authorized by law.

g. **Management Official.** An employee required or authorized by VA to formulate, determine, or influence the policies of the VA. {5 U.S.C. § 7103 (a)(II)}.

h. **Medical Review Officer.** The individual responsible for receiving laboratory results generated from the VA Drug-Free Workplace Program who is a licensed physician with knowledge of substance

abuse disorders and the appropriate medical training to interpret and evaluate all positive test results together with an individual's medical history and any other relevant biomedical information.

i. **Random Testing.** A system of drug testing imposed without individualized suspicion that a particular individual is using illegal drugs. Random testing may either be uniform, unannounced testing of testing designated employees occupying a specified area, element or position, or may be a statistically random sampling of such employees based on a neutral criterion, such as social security numbers.

j. **Supervisor.** An employee having authority to hire, direct, assign, promote, reward, transfer, furlough, lay off, recall, suspend, discipline, or remove other employees, to adjust their grievances, or to effectively recommend such action, if the exercise of the authority is not merely routine or clerical in nature, but requires the consistent exercise of independent judgment (Title 5 U.S.C. § 7103 (a)(10)).

k. **Testing Designated Positions.** Employment positions within VA which have been designated for random testing under paragraph 9.b. of [Part I to] VA Handbook 5383 [].

l. **Verified Positive Test Result.** A test result that has been screened positive by an FDA-approved immunoassay test, confirmed by a Gas Chromatography/Mass Spectrometry assay, (or other confirmatory tests approved by HHS), evaluated by the Medical Review Officer and determined by him/her to be justified under paragraph 13 of [Part I to] VA Handbook 5383 [].

