

VA DRUG-FREE WORKPLACE PROGRAM

1. **REASON FOR ISSUE:** To revise 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 is maintained on the [Office of the Chief Human Capital Officer SharePoint](#) and the [VA Publications website](#). This directive contains:
 - a. Information on the nature, frequency and types of drug tests;
 - b. Responsibilities for implementing and managing the program; and
 - c. References used in developing the directive and handbook.
3. **RESPONSIBLE OFFICE:** Human Resources and Administration/ Operations, Security, and Preparedness (HRA/OSP) (006), Office of the Chief Human Capital Officer (OCHCO) (05), Employee Relations and Performance Management Service (051).
4. **RELATED HANDBOOK:** VA Handbook 5383, VA Drug-Free Workplace Program.
5. **RESCISSIONS:** VA Directive 5383, dated December 23, 2004.

CERTIFIED BY:

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

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1. **PURPOSE.** This directive provides policy for the Drug-Free Workplace Program (DFWP) for the Department of Veterans Affairs (VA). VA's DFWP was certified by the Department of Health and Human Services (HHS) 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 VA Handbook 5383.
2. **POLICY.**
 - a. **General.**
 - (1) 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 employees could result in injury to self or others, the loss of patients' lives, patient injury, or damage to or destruction of property.
 - (2) 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 VA maintains a workplace free from illegal drugs is through drug testing. VA's plan includes provisions for mandatory and voluntary drug testing consistent with all scientific and technical guidelines for drug testing programs promulgated by HHS.
 - (3) It is VA policy that its workplace be free from illegal use, possession, or distribution of controlled substances, as specified in Schedules I and II, as defined in 21 U.S.C. § 802(6) and listed in § 812 of that title by the officers and employees of VA. The possession and distribution of controlled substances will be dealt with promptly. However, the policy's primary goal is to ensure illegal drug use is eliminated and VA's workplaces are safe, healthful, productive and secure.
 - (4) The success of a DFWP depends on how well VA leaders informs its employees of the hazards of drug use and on how much assistance it can provide to those who use illegal drugs. 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 employee assistance, supervisory training, employee education and drug testing on a carefully controlled and monitored basis.
 - (5) Specimen Collection Procedures.

- (a) Assignment of collection personnel and collection of urine specimens under VA's DFWP will be performed in accordance with guidelines published in the Federal Register by HHS on October 12, 2023, and any subsequent revisions made to those guidelines.
- (b) Veterans Health Administration (VHA) medical facilities will provide specimen collection services for their own facility as well as for Veterans Benefits Administration, National Cemetery Administration and any other VA field facility or Staff Office. Under Secretaries, Assistant Secretaries and Other Key Officials will ensure procedures are in place for drug testing outside of normal duty hours, and also in remote locations, e.g., outpatient clinics in Alaska, Hawaii, Montana. Facility directors, or designees, will determine whether the individual(s) will be tested at the medical center, or collection site personnel will be sent to the remote facility, or trained collection site personnel will be available at the remote location. Collectors will ensure specimens are collected in accordance with the most recent version of the [HHS Urine Specimen Collection Handbook for Federal Agency Workplace Drug Testing Programs](#).

b. Types of Drug Testing. VA's DFWP includes the following types of tests:

- (1) Applicant;
- (2) Random;
- (3) Reasonable suspicion;
- (4) Accident, injury, or unsafe practice;
- (5) Voluntary; and
- (6) Follow-up testing in conjunction with counseling or rehabilitation.

c. Drugs for Which Individuals Are Tested. VA tests for marijuana, cocaine, opioids, amphetamines and phencyclidine as part of the Department's applicant and random drug testing program. When conducting reasonable suspicion, accident, injury, or unsafe practice testing, VA may test for any drug identified in Schedule I or II of the Controlled Substances Act (21 U.S.C. § 812).

d. Labor Management Partnership. The active participation and support of recognized labor organizations can contribute to the success of the DFWP. 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 5 U.S.C. Chapter 71.

3. RESPONSIBILITIES.

- a. **Under Secretaries, Assistant Secretaries, Other Key Officials** will implement VA's DFWP within their respective organizations.
- b. **Under Secretary for Health (USH)** in addition to paragraph 3.a. above, will:
 - (1) Develop and issue laboratory protocols and accreditation requirements in accordance with HHS guidance;
 - (2) Issue directives, as needed, to VHA collection sites regarding specimen collection, chain of custody and transportation procedures in accordance with HHS guidelines;
 - (3) Issue directives and provide HHS guidelines, as needed, to locally appointed Medical Review Officers (MRO) regarding who may serve as an MRO along with training requirements and responsibilities;
 - (4) Identify any VA laboratory/laboratories that will conduct both screening and confirmation testing in accordance with HHS guidelines;
 - (5) Appoint a headquarters MRO in accordance with HHS guidelines and VA's DFWP. The headquarters MRO will be responsible for carrying out the duties and responsibilities of that position for all headquarters employees, as well as all Senior Executive Service (SES) employees, e.g., field facility Directors.
 - (6) Ensure collectors and collection sites comply with HHS mandatory guidelines including but not limited to:
 - (a) Developing and ensuring training courses are completed before an individual serves as a collector and/or a trainer for collectors;
 - (b) Ensuring training documentation is maintained for collectors and trainers for collectors;
 - (c) Ensuring refresher training is completed at least every five years for collectors and trainers for collectors;
 - (d) Ensuring collectors have been provided the name and telephone number of the Federal agency representative;
 - (e) Ensuring collection sites are identified, including designation of alternative collection sites for emergency/immediate need situations;
 - (f) Ensuring requirements for collection sites are identified and maintained;

- (g) Identifying where and for how long collection sites must maintain records in accordance with applicable record retention schedules, if applicable;
- (h) Ensuring the Office of Management and Budget-approved Federal chain of custody form is used;
- (i) Identifying and ensuring appropriate urine specimen collection containers and bottles are used and urine specimen collection procedures are followed;
- (j) Ensuring 5 percent or up to a maximum of 50 collection sites each year are inspected;
- (k) Investigating reported collection site deficiencies and taking appropriate action; and
- (l) Developing procedures for ensuring the confidentiality, maintenance and disposition of records.

c. Assistant Secretary for Human Resources and Administration/Operations, Security, and Preparedness (HRA/OSP) in addition to paragraph 3.a. above, will:

- (1) Upon the request of the Chief Human Capital Officer (CHCO), review an appeal of a decision to designate a position as a testing designated position (TDP); and
- (2) Approve the designation of a position for random drug testing.

d. Chief Human Capital Officer (CHCO) is the Drug Program Administrator (DPA) responsible carrying out the requirements of this program. The DPA is responsible for the overall implementation, direction, administration and management of VA's DFWP. This includes ensuring the means of selecting employees for random drug testing remains confidential and periodically evaluating whether the numbers of employees tested and the frequency with which those tests are administered satisfy VA's duty to achieve a drug-free workforce. In addition, the CHCO for HRA/OSP, or designee will:

- (1) Develop and control of a random selection process including sampling methodology; and
- (2) Provide advice and guidance to management officials regarding Employee Assistance Programs (EAP), supervisory training, employee education and appropriate disciplinary actions.

e. Chief, Operations, Security and Preparedness (OSP), or designee, will:

- (1) Continuously identify those incumbents who occupy positions designated as Special Sensitive or Critical Sensitive or have access to classified national security information and ensuring they are properly identified by the servicing Human Resources (HR) office in HR Smart;
 - (2) Suspend or revoke 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) Conduct investigations into any reported breaches of security related to the safekeeping of records, listings, etc., in connection with the VA's DFWP.
- f. **Chief Counsel, Office of the General Counsel (OGC), or designees** in addition to paragraph 3.a. above, will serve as the point of contact for legal inquiries.
- g. **Director, VA Center for Development and Civic Engagement (CDCE)** will ensure the requirements of VA DFWP are met for applicable volunteers.
- h. **Medical Center Directors** will appoint an MRO in accordance with HHS guidelines and this program. The MRO at each VHA facility is responsible for obtaining training and certification as required by HHS and is responsible for performing the duties of the position.
- i. **Medical Center Directors, Regional Office Directors, NCA Executive Director of Human Capital Management and SES Service Level Directors at VA Central Office** will:
- (1) Ensure the security of the list of employees identified for random testing and is responsible for scheduling employees for testing. The Director may delegate this responsibility in writing to one person in each facility to have access to the listing and be responsible for the scheduling of tests.
 - (2) Ensure employees in TDPs at their facilities receive individual notices informing them of their position being subject to random drug testing within one week of appointment to a testing designated position.
 - (3) Ensure Drug Program Coordinators (DPC) complete monthly and annual certifications within required timeframes.
 - (4) Establish local procedures for maintaining all release of information forms in accordance with the Records Control Schedule, Privacy Act, and any other applicable regulations.
- j. **Medical Review Officers (MROs)** will be licensed physicians with knowledge regarding the pharmacology and toxicology of illicit drugs. More than one physician may be appointed to serve as an MRO in the same facility. Before

serving as an MRO, the physician(s) must satisfactorily pass an initial examination by a nationally recognized entity identified by HHS in the Federal Register. Thereafter, the MRO(s) must complete requalification training in accordance with the timeframes identified by HHS to maintain their certification. MROs will perform their duties in accordance with the most recent version of the [HHS Medical Review Officers Guidance Manual for Federal Workplace Drug Testing Programs](#) in collaboration with the VHA Headquarters designated MRO. Duties include, but are not limited to:

- (1) Receiving all laboratory test results generated from the VA DFWP and ensuring the results are communicated to the DPC in a timely manner including appropriate documentation of a verified positive test result; and
- (2) Ensuring an individual who has tested positive has been afforded an opportunity to justify the test result.

k. Drug Program Coordinators (DPCs).

- (1) The following officials have been designated as DPCs.
 - (a) Under Secretary for Health, Under Secretary for Benefits, Under Secretary for Memorial Affairs, Assistant Secretaries or appropriate key officials, or designees for employees under their jurisdiction.
 - (b) CHCO for HRA/OSP, or designee, for VA Central Office employees.
 - (c) Network Directors, or designee, for employees under their jurisdiction.
 - (d) Field facility Directors, or designee, for employees under their jurisdiction.
 - (e) General Counsel for all OGC field employees.
- (2) The aforementioned officials will ensure each Personnel Office Identification (POID) has an assigned DPC designated in writing if a designee is appointed.
- (3) Each DPC will, in addition to other duties:
 - (a) Access HR Smart each month, no later than three business days from the beginning of the month, to obtain the names of employees who were randomly selected for drug testing;
 - (b) Schedule employees as soon as possible for random testing authorized under this program ensuring the random test is completed no later than the last day of the month, or an approved deferral is obtained no later than the last day of the month, if appropriate;

- (c) Receive drug test results from the MRO. Upon receipt of a verified positive test result, the DPC will:
 - i Inform those with a need to know of the verified positive test result of an applicant to ensure the tentative job offer is rescinded.
 - ii Inform the employee's supervisor to ensure appropriate action is taken, e.g., referral to the EAP, initiation of disciplinary action and removal of employee from a sensitive position.
 - (d) Complete and certify the Random and POID monthly reports in HR Smart within required timeframes;
 - (e) Complete and certify the Annual DFWP Report within required timeframe;
 - (f) Establish a procedure to ensure VA Form 10-5345, Request for and Authorization to Release Health Information, is completed and maintained as required;
 - (g) Ensure 30-Day Specific Notices are issued, signed and filed in the electronic Official Personnel Folders (e-OPFs) no later than 30 calendar days after an employee occupies a TDP; and
 - (h) Maintain all drug-free workplace-related records, e.g., custody and control forms, approved drug test deferrals.
 - (i) Coordinate and cooperate with other HR offices when courtesy drug tests are requested.
- l.** Human Resources (HR) Officials will provide advice and assistance to DPCs, administrative officials and EAP Coordinators in carrying out their responsibilities in accordance with this program.
- m.** Supervisors will be trained to recognize and address illegal drug use by employees, along with the procedures and requirements for drug testing and will receive information regarding referral of employees to EAP. In addition, supervisors will:
- (1) Determine if a reasonable suspicion test is needed;
 - (2) Refer employees to EAP for assistance in obtaining counseling and rehabilitation, upon a finding of illegal drug use or when employees invoke safe harbor; and
 - (3) Initiate appropriate disciplinary action upon a finding of illegal drug use along with following guidance regarding removing the employee from a sensitive position, if applicable.

- n. Contracting Officers (CO). When existing facilities are unable to meet the requirements for drug testing collection, or employees in TDPs are hired under a contract, the Secretary or designee will:
 - (1) Act as CO for the administration of all related contracts;
 - (2) Ensure contractors chosen to perform drug screening tests are duly certified pursuant to HHS guidelines and all contracts conform to technical specifications of HHS guidelines; and
 - (3) Ensure contracts contain a provision for testing contract employees who administer drug tests to VA employees, and those who occupy equivalent positions designated as TDPs, along with specific provisions for how contract employees will be randomly drug tested.

4. REFERENCES.

- a. 5 U.S.C. § 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
- b. 5 U.S.C. § 7103(a)(10) and (11)
- c. 5 U.S.C. § 8331 (20)
- d. 5 U.S.C. § 8401 (17)
- e. 21 U.S.C. § 802(6)
- f. 21 U.S.C. § 812, Schedule of Controlled Substances
- g. 42 U.S.C. § 290dd
- h. 5 C.F.R. Part 732, National Security Positions
- i. 5 C.F.R. Part 752, Adverse Actions
- j. 38 C.F.R. § 1.575-1.584, Implementing the Privacy Act of 1974 within VA
- k. P.L. 95-454, the Civil Service Reform Act of 1978
- l. P.L. 99-570, the Federal Employees Substance Abuse Education and Treatment Act of 1986, § 6004(a), codified at 5 U.S.C. § 7904, "Employee assistance programs relating to drug abuse and alcohol abuse"
- m. Section 503 of the Supplemental Appropriations Act of 1987, P.L. 100-71, 101 Stat. 391, 468-471, codified at 5 U.S.C. § 7301 note (1987)
- n. Executive Order 10450, Security Requirements for Government Employees

- o.** Executive Order 12564, Drug-Free Federal Workplace
- p.** Executive Order 12968, Access to Classified Information
- q.** HHS Medical Review Officers Guidance Manual for Federal Workplace Drug Testing Programs
- r.** HHS Urine Specimen Collection Handbook for Federal Agency Workplace Drug Testing Programs
- s.** 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) and subsequent revisions
- t.** VA Directive and Handbook 0710, Personnel Security and Suitability Program
- u.** VA Handbook 5005, Staffing
- v.** VA Handbook 5019, Employee Occupational Health Service
- w.** VA Handbook 5021, Employee-Management Relations
- x.** VA Handbook 5027, Senior Executive Service
- y.** Secretary Memo regarding Release of Information dated August 22, 2018
- z.** Office of Personnel Management Memo, "Assessing the Suitability/Fitness of Applicants of Appointees on the Basis of Marijuana Use; maintaining a Drug-Free Workplace" dated February 25, 2021