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POLICY TRANSMITTAL NO. 06-23	DATE: AUGUST 29, 2006
HUMAN RESOURCES MANAGEMENT DIVISION	DEPARTMENT OF HUMAN SERVICES OFFICE OF PLANNING, POLICY & RESEARCH

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TO: ALL OFFICES

SUBJECT: MANUAL MATERIAL

OAC 340:2-1, Table of Contents; and 2-1-40 through 2-1-44.

EXPLANATION: **Policy revisions were approved by the Commission and the Governor as required by the Administrative Procedures Act.**

340:2-1-40 and 340:2-1-43 revisions establish rules for drug and alcohol testing for all new hires at the Oklahoma Department of Human Services (OKDHS), for all employees reasonably suspected of using alcohol or illegal drugs while on duty, and random testing for persons employed as direct care specialists.

340:2-1-41 revisions specify all employees are prohibited from possessing or using alcohol or illegal drugs in the workplace or while on duty or on-call.

340:2-1-42 revisions add new definitions and amend existing definitions.

340:2-1-44 revisions specify any OKDHS employee may be discharged for pleading guilty or being found guilty regarding illegal drug involvement or usage.

Original signed on 4-27-06

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A. L. Smith, Director  
Human Services Management Division

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Sharon Neuwald, Co-Interim Administrator  
Office of Planning, Policy & Research

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WF # 06-03 (NAP)

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## **INSTRUCTIONS FOR FILING MANUAL MATERIAL**

OAC is the acronym for Oklahoma Administrative Code. If OAC appears before a number on an Appendix or before a Section in text, it means the Appendix or text contains rules or administrative law. Lengthy internal policies and procedures have the same Chapter number as the OAC Chapter to which they pertain following a “DHS” number, such as personnel policy at DHS:2-1 and personnel rules at OAC 340:2-1. The “340” is the Title number that designates DHS as the rulemaking agency; the “2” specifies the Chapter number; and the “1” specifies the Subchapter number.

The chronological order for filing manual material is: (1) OAC 340 by designated Chapter and Subchapter number; (2) if applicable, DHS numbered text for the designated Chapter and Subchapter; and (3) all OAC Appendices with the designated Chapter number. For example, the order for filing personnel policy is OAC 340:2-1, DHS:2-1, and OAC 340:2 Appendices behind all Chapter 2 manual material. Any questions or assistance with filing manual material will be addressed by contacting Policy Management Unit staff at (405) 521-3611.

### **REMOVE**

340:2-1, Table of Contents

340:2-1-40

340:2-1-41

340:2-1-42

340:2-1-43

340:2-1-44

### **INSERT**

340:2-1, Table of Contents, pages 1-3,  
revised 9-1-06

340:2-1-40, 1 page only, revised 9-1-06

340:2-1-41, 1 page only, revised 9-1-06

340:2-1-42, pages 1-2, revised 9-1-06

340:2-1-43, pages 1-3, revised 9-1-06

340:2-1-44, pages 1-2, revised 9-1-06

**SUBCHAPTER 1. HUMAN RESOURCES MANAGEMENT DIVISION (HRMD)****PART 1. GENERAL PROVISIONS**

## Section

- 340:2-1-1. Purpose
- 340:2-1-2. Appointing authority
- 340:2-1-3. Oklahoma Merit system of Personnel Administration (Merit System)
- 340:2-1-4. Political activity
- 340:2-1-5. Benefits
- 340:2-1-6. Investigation of employees accused of child abuse or neglect
- 340:2-1-7. Financial Disclosures filed with the Ethics Commission (EC) required and designated
- 340:2-1-8. Employee ethics and other employment

**PART 3. INTERNAL HUMAN RESOURCES**

- 340:2-1-25. Application
- 340:2-1-26. Employment and assignment
- 340:2-1-27. Report of entrance on duty
- 340:2-1-28. Probationary or trial period, classified service
- 340:2-1-29. Appointments
- 340:2-1-30. The drug-free workplace
- 340:2-1-31. Classification plan
- 340:2-1-32. Salary Administration Plan (SAP) and Agency Compensation Guidelines
- 340:2-1-33. Fair Labor Standards Act rules
- 340:2-1-34. Employment verifications and references

**PART 4. ALCOHOL AND DRUG TESTING POLICY APPLICABLE TO OKDHS  
EMPLOYEES AND APPLICANTS**

- 340:2-1-40. Purpose
- 340:2-1-41. Prohibition
- 340:2-1-42. Definitions
- 340:2-1-43. Implementation of alcohol and drug testing of OKDHS employees and applicants
- 340:2-1-44. Disciplinary action
- 340:2-1-45. Employee Assistance Program referral
- 340:2-1-46. Confidentiality
- 340:2-1-47. Grievance rights

**PART 5. ADMINISTRATIVE PROCEDURES**

- 340:2-1-55. Individual personnel records
- 340:2-1-56. Criminal history checks
- 340:2-1-57. Smoking policy
- 340:2-1-58. Reduced services or office closures

**PART 7. RECRUITMENT, SELECTION, AND PLACEMENT**

- 340:2-1-75. Policy
- 340:2-1-76. Appointments and changes in employee job family descriptor (JFD) and level or position that are not subject to the vacancy posting provisions of the rules in this Part
- 340:2-1-77. Vacancy posting procedures
- 340:2-1-78. Method of application
- 340:2-1-79. Eligibility to compete for positions in the classified service
- 340:2-1-80. Eligibility to compete for positions in the unclassified service
- 340:2-1-81. Issuing OKDHS Form P-S-76, Applicant List and Office of Personnel Management (OPM) certificate of eligibles (certificate)
- 340:2-1-82. Job-related selection criteria and other selection procedures
- 340:2-1-83. Selection advisory committee for positions in the classified and unclassified service
- 340:2-1-84. Interviews for positions in the classified service
- 340:2-1-85. Final selection
- 340:2-1-86. Delegation of responsibility for vacancy posting and selection procedures to divisions, facilities, and local offices
- 340:2-1-87. Compensation
- 340:2-1-88. Alternate hiring levels
- 340:2-1-89. Office of Personnel Management (OPM) certificate of eligibles (certificate) - classified service
- 340:2-1-90. Required forms to be completed by OPM certificate applicants **[REVOKED]**
- 340:2-1-91. Submission of OPM certificate and support documentation to personnel **[REVOKED]**
- 340:2-1-92. Personnel review of returned OPM certificate **[REVOKED]**
- 340:2-1-93. Applicants who have previously been discharged from employment in the classified service

**PART 9. TRAVEL REIMBURSEMENT [REVOKED]**

- 340:2-1-100. Purpose and authority **[SUPERSEDED]**

- 340:2-1-101. Definitions **[SUPERSEDED]**
- 340:2-1-102. Applicability; employee/non-employee responsibility **[SUPERSEDED]**
- 340:2-1-103. Completion of Travel Reimbursement Form (Adm-6) **[SUPERSEDED]**
- 340:2-1-104. Authorization of travel (Classified/Unclassified/Exempt Service) **[SUPERSEDED]**
- 340:2-1-105. Attendance at previously arranged meetings **[SUPERSEDED]**
- 340:2-1-106. Per diem **[SUPERSEDED]**
- 340:2-1-107. Subsistence in lieu of per diem **[SUPERSEDED]**
- 340:2-1-108. Miscellaneous expenses **[SUPERSEDED]**



**PART 4. ALCOHOL AND DRUG TESTING POLICY APPLICABLE TO OKDHS  
EMPLOYEES AND APPLICANTS**

**340:2-1-40. Purpose**

The rules in this Part: ■ 1

(1) establish an Oklahoma Department of Human Services (OKDHS) alcohol and drug testing program for:

(A) testing all persons to whom a conditional offer of employment is made;

(B) reasonable suspicion testing for all OKDHS employees; and

(C) random testing for persons employed by OKDHS as direct care specialists, the job family which provides direct care to children or individuals with developmental disabilities; and

(2) are in compliance with Standards for Workplace Drug and Alcohol Testing Act contained in Chapter 15 of Title 40 of the Oklahoma Statutes.

**INSTRUCTIONS TO STAFF**

**1. Refer to OAC 340:2-15-40 through 340:2-15-49 for rules regarding alcohol and drug testing for drivers of commercial motor vehicles.**



**340:2-1-41. Prohibition**

The Oklahoma Department of Human Services (OKDHS) prohibits all employees from:

- (1) providing OKDHS services while under the influence of alcohol or illegal drugs;
- (2) possessing or using alcohol or illegal drugs in the workplace, while on duty, or on-call; and
- (3) using any non-prescribed controlled substances in the workplace, while on duty, off duty, or on-call.



**340:2-1-42. Definitions**

The following words and terms when used in this Part shall have the following meaning unless the context clearly indicates otherwise:

**"Alcohol"** means ethyl alcohol or ethanol.

**"Alcohol test"** means a breath or saliva test administered for the purpose of determining the presence or absence of alcohol or its metabolites in a person's bodily tissue, fluids, or products. Testing of OKDHS employees is conducted and evaluated by qualified individuals and facilities licensed by the Oklahoma State Department of Health (OSDH) in accordance with Standards for Workplace Drug and Alcohol Testing Act. [40 O.S. § 551 - 565]

**"Applicant"** means any person making application for initial hire, reinstatement, or transfer from a state agency, for any position within the Oklahoma Department of Human Services (OKDHS), or for transfer, demotion, promotion, or reinstatement into the position of direct care specialist. OKDHS, upon a conditional offer of employment, requires the applicant to undergo alcohol and drug testing.

**"Conditional offer of employment"** means an offer made to an applicant for employment with OKDHS, conditioned upon successful completion of a drug and alcohol test prior to the start of employment.

**"Confirmation test"** means an alcohol or drug test, conducted in accordance with Drug and Alcohol Testing Rules, as amended, of OSDH, to substantiate the results of a prior alcohol or drug test. [OAC 310:638-1-1 – 310:638-7-11] For urine or hair, the test is performed on the same sample or a split sample.

**"Direct care staff"** means any employee, whether permanent, classified, unclassified, probationary, or temporary, in the job family of direct care specialist.

**"Drug"** means any controlled substance approved for hair or urine testing by OSDH, including amphetamines, cannabinoids, cocaine, phencyclidine (PCP), hallucinogens, methaqualone, opiates, barbiturates, benzodiazepines, synthetic narcotics, designer drugs, or a metabolite of any of the substances listed herein.

**"Drug test"** means a hair or urine test administered for the purpose of determining the presence or absence of a drug or its metabolites in a person's bodily tissue, fluids, or products. Testing shall conform to the Drug and Alcohol Testing Rules, as amended, adopted by OSDH. [OAC 310:638-1-1 - 310:638-7-11] The testing of OKDHS employees is conducted and evaluated by qualified individuals and facilities licensed by

OSDH in accordance with Standards for Workplace Drug and Alcohol Testing Act. [40 O.S. § 551 - 565] ■ 1

**"Employee"** means anyone employed by OKDHS, whether permanent, classified, unclassified, probationary, or temporary.

**"Random testing"** means an objective mechanism for selecting direct care employees for alcohol and drug testing which results in an equal probability any employee from a group of direct care employees will be selected.

**"Reasonable suspicion"** means a belief an employee is using or has used alcohol or drugs in violation of this policy. Reasonable suspicion is drawn from specific, objective, and articulable facts and reasonable inferences drawn from those facts in light of experience and training, and may be based upon but not limited to: ■ 2

(A) documented observations, such as the physical symptoms or manifestations of being under the influence of alcohol or drugs while at work or on duty or the direct observation of alcohol or drug use while at work or on duty;

(B) a report of alcohol or drug use while at work or on duty, provided by reliable and credible sources and which has been independently corroborated;

(C) evidence an employee has tampered with an alcohol or drug test as required by this policy; or

(D) evidence an employee is involved in the use, possession, sale, solicitation, or transfer of illegal drugs while on duty, on OKDHS property, or operating state-owned vehicles, machinery, or equipment.

**"Review officer"** means a physician certified pursuant to Standards for Workplace Drug and Alcohol Testing Act [40 O.S. § 551 - 565] who reviews positive alcohol and drug test results and contacts each individual having a positive alcohol or drug test to determine if there is a medical reason for the positive test result.

### **INSTRUCTIONS TO STAFF**

- 1. Refer to OAC 340:2-15-40 through 340:2-15-49 for rules regarding alcohol and drug testing for drivers of commercial motor vehicles.**
- 2. Form P-94, Reasonable Suspicion Checklist, is provided to assist observing supervisors in documenting reasonable suspicion.**

**340:2-1-43. Implementation of alcohol and drug testing of OKDHS employees and applicants**

(a) **Notice of communication.** The local administrator or designee ensures a copy of the rules in Part 4 of this Subchapter are:

(1) conspicuously posted in all Oklahoma Department of Human Services (OKDHS) working units;

(2) provided to all employees;

(3) provided to employees 30 days prior to the initial implementation or implementation of changes; and

(4) provided to each applicant upon his or her receipt of a conditional offer of employment.

(b) **Determination of persons subject to alcohol and drug testing.** Persons subject to alcohol and drug testing are included in (1) through (3). ■ 1

(1) All applicants who are made conditional offers of employment are required to take a pre-employment drug and alcohol test. A confirmed positive test result, or a refusal to be tested, is a basis for refusal to hire.

(2) All employees of OKDHS are subject to reasonable suspicion drug and alcohol testing.

(3) Employees of OKDHS employed as direct care specialists are subject to random alcohol and drug testing.

(c) **Types of testing.** The situations in which alcohol and drug testing occur are identified in (1) through (3) of this subsection.

(1) **Pre-employment or pre-placement.** All candidates conditionally offered initial hire, and all direct care candidates conditionally offered transfer, promotion, demotion, reinstatement, or placement into positions as direct care specialists are tested for alcohol and drugs.

(2) **Random testing.** Random alcohol and drug testing is administered at a minimum annual rate of 50% of direct care specialists. Tests are unannounced and are conducted throughout the calendar year. The Developmental Disabilities Services Division and the Children and Family Services Division provide to the

contracted testing vendor a regularly updated list of the names, Social Security numbers, and work locations for all direct care specialists.

(3) **Reasonable suspicion.** Any employee may be tested upon documented grounds for reasonable suspicion in accordance with this policy.

(A) A request for reasonable suspicion testing of an individual must be submitted in writing to the local administrator, stating the indications upon which reasonable suspicion is based. The basis for reasonable suspicion testing is the employee:

(i) exhibits the physical symptoms or manifestations of being under the influence of alcohol or drugs; and

(ii) must be observed by two persons who have completed specialized training provided by OKDHS in recognizing physical symptoms or manifestations of being under the influence of alcohol or drugs. Such specialized training is deemed to include an OKDHS on-line training course on OKDHS drug and alcohol policy approved for all employees. One of the individuals making the observation must be a supervisor. ■ 2

(B) Upon approval by the local administrator, the employee is required to submit to alcohol or drug testing.

(f) **Arrangements for testing.** The local administrator or designee is responsible for ensuring employees and applicants in their facilities who are subject to testing are tested in accordance with this policy.

(g) **On duty testing.** Alcohol and drug testing of an employee occurs during or immediately after the employee's work period. An employee is considered on duty during this time.

(h) **Testing procedures.** Testing for alcohol and drugs is a two step process.

(1) For alcohol, a breath or saliva test is performed as the first step. If positive for alcohol, a confirmation test is performed as the second step.

(2) Hair or urine are used for the initial and the confirmation test for all drugs. Specimens are collected at the test site, and positive test results are reviewed by the review officer.

**INSTRUCTIONS TO STAFF**

- 1. Refer to OAC 340:2-15-40 through 340:2-15-49 for rules regarding alcohol and drug testing for drivers of commercial motor vehicles.**
- 2. Supervisors may use Form 11PE094E, Reasonable Suspicion Checklist, in documenting reasonable suspicion.**



**340:2-1-44. Disciplinary action**

(a) **Disciplinary action for illegal drug involvement or usage.** Discharge proceedings are initiated for an Oklahoma Department of Human Services (OKDHS) employee: ■ 1

(1) with a confirmed positive result for a drug test not resulting from legitimate medical use of prescribed medication. No employee may be discharged as a result of a positive test result unless confirmed by a second test using gas chromatography, gas chromatography-mass spectroscopy, or an equivalent scientifically accepted method of equal or greater accuracy, approved by Drug and Alcohol Testing Rules [OAC 310:638-1-1 - 310:638-7-11]; or

(2) who enters a guilty or nolo contendere plea for, or who is found guilty of the on or off duty sale, distribution, possession, or the manufacture of illegal drugs.

(b) **Disciplinary action for positive alcohol test results.** OKDHS follows progressive discipline for employees with positive alcohol test results. However, aggravating circumstances, such as the concurrent violation of other OKDHS policies or serious injuries or fatalities due to or contributed to by the use of alcohol, can result in more serious disciplinary action, including discharge.

(1) An employee's first incident of having an alcohol level from .02 to .039 results in a written reprimand.

(2) An employee's first incident of having an alcohol level from .04 to .079 results in a five day involuntary suspension without pay.

(3) Discharge proceedings are initiated for any incident when an employee is tested for alcohol and has an alcohol level of .08 or higher.

(4) Discharge proceedings are initiated for an employee's second positive test for alcohol within 24 consecutive calendar months of the first positive test result, regardless of the alcohol levels for either incident.

(c) **Refusal to submit.** Discharge proceedings are initiated for any employee who refuses to submit to an alcohol or drug test.

(d) **Permanent, classified employees who are discharged or suspended without pay.** Permanent, classified employees who are discharged, demoted, or suspended without pay as a result of a positive test for alcohol or drugs may appeal the discharge

or suspension to the Oklahoma Merit Protection Commission pursuant to the Oklahoma Personnel Act and the Oklahoma Merit Rules for Employment.

**INSTRUCTIONS TO STAFF**

- 1. Refer to OAC 340:2-15-40 through 340:2-15-49 for rules regarding alcohol and drug testing for drivers of commercial motor vehicles.**