

DEPARTMENT OF SERVICES FOR CHILDREN, YOUTH AND THEIR FAMILIES

DIVISION OF MANAGEMENT SUPPORT SERVICES

Statutory Authority: 29 Del.C. §9020 (29 Del.C. §9020)

9 DE Admin. Code 501

FINAL

ORDER

501 Procedures for Drug Testing Certain Employees

SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Pursuant to 29 Del.C. §9020, the Department of Services for Children, Youth & Their Families (DSCYF) sought to promulgate regulations regarding its procedures for drug testing certain employees. DSCYF sought to amend Regulation 501 to remove outdated language and to clarify that the only DSCYF employees subject to the random drug testing procedures are those with job duties involving a safety, security-sensitive or childcare position.

Notice of the proposed regulation was published in the *Register of Regulations* on January 1, 2025. DSCYF did not receive any public comment concerning the proposed regulation.

FINDINGS OF FACT

In accordance with 29 Del.C. §10118(c), the Secretary determined that no additional changes are needed.

The Secretary has reviewed the proposed regulation and has determined that any assessment of the impact of the proposed regulation on the state's greenhouse gas emissions reduction targets and resiliency to climate change is not practical.

DECISION TO AMEND THE REGULATION

For the foregoing reasons, DSCYF concludes that it is appropriate to amend 16 DE Admin. Code 501 Procedures for Drug Testing Certain Employees.

ORDER

AND NOW on this 24th day of February 2025, it is hereby ordered that:

1. The proposed amendments to 16 DE Admin. Code 501 Procedures for Drug Testing Certain Employees are adopted;
2. The text of the final regulations shall be in the form attached hereto as Exhibit A, which remain unchanged as initially published in the January 1, 2025 *Delaware Register of Regulations*; and
3. The effective date of the Order is ten days from the date of its publication in the Delaware *Register of Regulations* in accordance with 29 Del.C. §10118(c).

IT IS SO ORDERED.

Department of Services for Children, Youth & Their Families

Steven Yeatman, Secretary

501 Procedures for Drug Testing Certain Employees

1.0 Authority

29 Del.C. §9020

2.0 Purpose

The purpose of this ~~policy~~ regulation is to affirm the commitment of the Department of Services for Children, Youth and Their Families (DSCYF) to the protection of children/youth in ~~our~~ its care by requiring all employees in a safety, ~~security sensitive~~ security-sensitive, or childcare position to undergo testing for commonly abused controlled substances and to establish procedures for the department's drug testing program in order to detect and deter the illegal use of ~~drugs by employees~~ prohibited substances.

3.0 Applicability

- 3.1 This ~~policy~~ regulation applies to all employees in a safety, ~~security sensitive~~ security-sensitive, or childcare position including merit, merit exempt and casual/seasonals as defined by DSCYF policy. ~~Since all positions within the Department are considered safety, security sensitive or childcare positions this policy is applicable to all employees.~~ If there are any conflicts between this ~~policy~~ regulation and the merit rules, as set forth in Merit Rule 1.2, the merit rules shall prevail unless superseded by a collective bargaining agreement (GBA) in accordance with Merit Rule 1.3.
- 3.2 ~~All employees will receive a copy of this policy and will sign and return the attached receipt to Human Resources. This policy will act as an official notice for periodic drug testing. No other announcement will be made.~~

4.0 Definitions

~~"Chain of custody"~~: the method of tracing each urine specimen to maintain control from initial collection to final disposition.

~~"Collection sites"~~: the designated locations where employees present themselves to provide urine specimens.

~~"Confirmation test"~~: an analytical procedure to identify the presence of a specific drug or metabolite, which is independent of the initial test, performed on the same specimen and which uses a different chemical principle from that of the initial test to ensure reliability and accuracy.

~~"Confirmed positive result"~~: the presence of a controlled substance in the pure form or its metabolites, at or above the cutoff level, as identified in two consecutive tests on the same sample which employ different test methods, and which is determined not to have been caused by an alternative medical explanation.

~~"Contractor"~~: entity paid on a contractual basis to maintain a list of employees in the random testing pool, select employees for random testing, collect specimens, conduct reasonable suspicion and incident triggered testing, safeguard specimens, interpret results, notify DSCYF of positive tests and provide training to supervisors regarding bases for reasonable suspicion testing.

~~"Employee"~~: any person receiving compensation as an employee of the DSCYF. **"Employee"** means any person hired by DSCYF and receiving compensation for work performed for DSCYF.

~~"Employee Assistance Program (EAP)"~~: the state of Delaware's employee assistance program that provides services to a benefit covered employee who has tested positive for the use of prohibited drugs.

~~"Employee testing number"~~: the employee id (EMPLID) number assigned to each employee by the Payroll Human Resource Statewide Technology (PHRST) system.

~~"Incident Triggered Testing"~~: Any **triggered testing** means any incident involving death or serious injury to a DSCYF employee, DSCYF resident or client, loss or significant damage to department DSCYF property, including any accident involving a motor vehicle transporting DSCYF clients or residents, or the escape or runaway of a resident where the ~~security sensitive~~ an employee was involved in the incident.

~~"Non-negative test result"~~: Test results that indicate a positive, diluted, adulterated, substituted or similar result. All non-negative test results are reviewed by a Medical Review Officer (MRO).

"Prohibited substance" means drugs and other substances that may affect physical or mental capabilities while working including marijuana, cocaine, alcohol, opiates, phencyclidine, and amphetamines.

~~"Random Testing"~~: Tests based upon an appropriate random sampling technique, with significant samples of DSCYF employees in safety, security sensitive or childcare positions being selected on a periodic basis with all such employees having an equal chance of being selected **testing** means drug testing based upon a random sampling technique of regulated employees. Random testing occurs periodically with an equal chance of selection for all regulated employees.

"Reasonable Suspicion Testing": Includes, but is not limited to, **testing** means testing as a result of observing the employee(s) employee either using, distributing, or possessing a drug prohibited substance, displaying physical symptoms of being under the influence of a drug prohibited substance, or finding drug prohibited substances or related paraphernalia in the workplace.

"Regulated employees" means any employee or prospective employee accepting job duties involving a safety, security-sensitive, or childcare position. Regulated employees include staff who perform 1 or more of the

following duties in their role with DSCYF: carry firearms, administer medication, assess the immediate safety of children including risk of suicide, homicide, or child abuse and neglect, regularly transport children or their families or both as part of their job duties, have responsibility for the direct oversight and supervision of children in facilities and who assess the risk of youth to the safety of the community.

5.0 Policy

- 5.1 The department is committed to maintaining a drug free environment through the use of a reasonable suspicion, return to duty, and random drug testing program. The DSCYF personnel hold positions of public trust and must not place themselves in a position where client safety may be compromised as a result of an employee's drug use. Such misconduct conflicts with their duties, poses a risk to the safety and security of residents, clients, other employees, and the public and jeopardizes the public's confidence. DSCYF shall conduct its drug testing program in accordance with DSCYF policy.
- 5.2 All employees are subject to reasonable suspicion and incident-triggered drug testing as outlined in DSCYF policy. Regulated employees included in DSCYF's safety-sensitive classification are subject to random drug testing.
- 5.2 5.3 Employees on initial probation and casual/seasonal employees who have not satisfied the merit comparable initial probation requirement will be terminated if they receive a positive test result without recourse to the grievance procedure.
- 5.3 5.4 Casual/seasonal employees who have satisfied the merit comparable initial probation requirement may enter into an accredited drug abuse assistance or rehabilitation program at their own expense. ~~Refer to section X. G. for returning to duty.~~
- 5.4 5.5 Employees who seek assistance, prior to being randomly selected for testing, may enter into an accredited drug abuse assistance or rehabilitation program. The employee may not return to work until they have complied with ~~section X. G.~~ the requirements for returning to duty as outlined in DSCYF policy.

6.0 Procedures

- 6.1 Notice of testing:
 - 6.1.1 ~~Upon arrival at the worksite, selected employees will be given and acknowledge receipt of a Chain of Custody form. The employee must report to a designated collection site and provide a sample within twenty-four (24) hours of notification.~~
 - 6.1.2 ~~Employees notified to report must report for testing to the designated collection site. No requests to be excused or rescheduled shall be granted. Any failure to report, refusal to be tested or refusal to cooperate with the testing procedure will result in the removal from the workplace without pay and will be considered as a positive result.~~
- 6.2 Random testing:
 - 6.2.1 ~~All employees are subject to random testing.~~
 - 6.2.2 ~~Selection is to be based on a computerized random selection of employee testing numbers, not names.~~
 - 6.2.3 ~~Monthly, the drug testing contractor will randomly select EMPLIDs equivalent to 25% of the random testing population per quarter. Because the selection process is random, some employees may not be tested within a year, while others may be tested more than once.~~
- 6.3 Reasonable suspicion testing
 - 6.3.1 ~~In the event of reasonable suspicion, the facility head will contact human resources, who will make a determination and contact the contractor if a decision is made to test.~~
- 6.4 Incident triggered testing
 - 6.4.1 ~~In the event of an incident triggered event, the facility head will contact human resources, who will make a determination and contact the contractor if a decision is made to test.~~
- 6.5 Return to Duty Testing
 - 6.5.1 ~~Before any employee is allowed to return to duty, the employee must have a verified negative drug screen performed by the Contractor.~~

7.0 Specimen Collection Procedures

- 7.1 ~~The State will have a federally certified collector who will be responsible for conducting all urine collections.~~
- 7.2 ~~Urine specimens will be collected in accordance with current Federal Department of Transportation standards. Every effort will be made to assure the dignity and privacy of employees being tested.~~

- 7.3 ~~If the Contractor determines that the employee is attempting to substitute or adulterate the specimen, the Contractor shall document the fact and direct the employee to provide another specimen. Both specimens shall be forwarded to the laboratory. Confirmation of a substituted or adulterated specimen will be considered as a positive test result.~~

8.0 Laboratory Procedures

- 8.1 ~~The laboratory will test for marijuana, cocaine, opiates, phencyclidine and amphetamines. The initial procedure employed will be the Enzyme Multiplied Immunoassay Testing (EMIT) or similar federally approved procedure. Cutoff levels will be consistent with current Federal Department of Transportation standards, which are subject to change.~~
- 8.2 ~~All positive specimens shall be confirmed using the Gas Chromatography/Mass Spectrometry (GC/MS), which shall be conducted from the same specimen.~~
- 8.3 ~~The confirmation test results are reviewed and interpreted by a Medical Review Officer (MRO) before they are reported to the employer. If the laboratory reports a non-negative result to the MRO, the MRO contacts the employee and conducts an interview to determine if there is an alternative explanation for the. If the employee provides appropriate documentation and the MRO determines that it is legitimate explanation and/or medical documentation, the drug test result is reported as negative to the employer.~~
- 8.4 ~~The MRO will contact the DSCYF Designated Employer Representative (DER) within the Human Resource Office.~~

9.0 Preservation Procedures

~~Specimens determined to contain drugs will be preserved at the laboratory for a minimum of twelve (12) months. Employees testing positive may, upon written request to Human Resources, arrange to have their specimen retested. All costs, including lab fees and transportation shall be paid by the employee requesting the retest.~~

10.0 Post Testing Procedures

- 10.1 ~~If the lab results are negative, the sample shall be destroyed.~~
- 10.2 ~~If the lab results are positive, the report will be forwarded to Human Resources by the MRO.~~
- 10.3 ~~The Human Resource Office will then notify the appropriate Division Director or designee. They will, in turn, notify the employee and immediately remove him/her from the workplace without pay.~~
- 10.4 ~~The employee is then directed to participate in an accredited drug abuse assistance or rehabilitation program. Refusal to do so may result in dismissal. All benefit covered employees will be referred to the State's EAP program for assistance in enrollment.~~
- 10.5 ~~Once the employee makes contact with an accredited drug abuse assistance or rehabilitation program, and provides documentation of same, the employee will be allowed to use accrued leave, rescheduled holidays or compensatory time previously earned.~~
- 10.6 ~~Before being allowed to return to duty, the employee must:~~
- 10.6.1 ~~Provide documentation to Human Resources showing that the drug abuse assistance or rehabilitation program was successfully completed and the employee has been released to return to work. "Successful completion" means the employee has achieved a drug free state as determined by the program counselor, and~~
- 10.6.2 ~~The employee will then be required to pass a "return to duty" drug test paid for by the DSCYF before being cleared to return to work.~~
- 10.7 ~~Any employee who tests positive on a drug test for a second time within five (5) years from the date of program completion will be terminated without the option to participate in a treatment program.~~

15 DE Reg. 1047 (01/01/12)

28 DE Reg. 675 (03/01/25) (Final)