



Drug and Alcohol Testing UPDATE



May 2004

Am I in violation of the Privacy Act?

Does releasing drug and alcohol testing information violate the Department of Health and Human Services (HHS) Health Insurance Portability and Accountability Act of 1996 (HIPAA), commonly known as The Privacy Act?

Are employers and their service agents in a Department of Transportation (DOT) drug and alcohol testing program **required to obtain employee written authorization in order to disclose drug and alcohol testing information?** (*The lab, collectors, Medical Review Officers, and Consortiums are considered service agents.*)

The Office of Drug and Alcohol Policy and Compliance says [the short](#)

answer to these questions is **no**. The reason is the DOT required drug and alcohol testing information is different from health information covered by HIPAA rules.

The DOT program is concerned only with the employees' compliance with DOT safety regulations, and not with preventive, diagnostic, therapeutic, rehabilitative, maintenance, or palliative care or the past, present, or future physical or mental health or condition of an individual. Therefore, an employer or service agent can disclose drug and alcohol testing information with written consent or authorization from the employee in the following circumstances:

- 1) When an employee requests his/her drug and alcohol testing records from their current employer;
- 2) When a subsequent employer is requesting drug and alcohol testing information on an employee who

was previously employed with an employer within the last two years;

- 3) When a prospective employer is requesting drug and alcohol testing information from previous employers that the applicant had a DOT-covered position with; and
- 4) When a service agent (Consortium) is requesting additional information from a Substance Abuse Professional about a particular employee.

HHS agrees that there is no conflict between the HIPAA rules and the DOT requirements.

For the RECORD ...

IMPORTANT: Please be sure to keep current your list of employees who are participating in your drug/alcohol program.

If you need to add or remove employees from your list, you must send (FAX # 217/585-2472) an employee action form to IMAWA

What does YOUR Substance Abuse POLICY say?

Question: What should you do when an employee tests positive for drugs?

Answer: *The FIRST thing you should do is to refer to your Drug & Alcohol Abuse Policy and check to see what is indicated for Disciplinary Action (page 20 of your policy).*

Question: I haven't marked anything in the options for Disciplinary Action; what should I do now?

Answer: *It is the employer's responsibility to include in their policy a disciplinary action procedure, and to make sure all of their employees initial and date each and every page of the entire policy.*

If you have not marked an option for Disciplinary Action, there are two things our Consortium strongly advises: First of all, if you had an employee who tested positive during this time, do not terminate them. Why? Because the employee was not informed to whether he/she would be terminated if he/she tested positive.

Second, immediately revise your policy to indicate (N) a disciplinary option and have all of your employees initial and date beside the Option you have chosen, then place a copy of the initialed document in each employee's file.

The best thing you can do NOW is review your current Drug & Alcohol Abuse Policy to make sure you have marked a disciplinary option, and that your employees are fully aware of the marked option.

This information is provided to members of our Consortium. If you use another Consortium, do you receive this kind of information?

Questions? Please call Kim at IMAWA; she'll be glad to help you. (888) 791-2516

Random Testing Procedures

FRIENDLY REMINDER:

When you receive a random notice from IMAWA for your employees, be sure to schedule testing as soon as possible to avoid going over the time limit allowed for testing. Our Consortium requires that **random selections must be tested within the same month as the notice is received.**

If the selected employee is seasonal, laid off, on medical leave, on workers compensation, or on active military duty, etc.; and will not be back to work in the month they were selected for random testing, please notify Kim at IMAWA immediately. TOLL FREE phone (888) 791-2516.

Drug and Alcohol Abuse Prevalent in Today's Society!

(Reference: www.usnodrugs.com/drug-alcohol-abuse.htm)

Drug and alcohol abuse are very prevalent in our society today. Drugs of abuse mimic neurotransmitters, in that they produce similar chemical activity in the nervous system. When too many drugs or too much alcohol is used for too long, the body's natural production of neurochemicals may shut down.

Interestingly, each drug of abuse (including alcohol) appears to mimic one or more chemicals in the nervous system. For example, heroin appears to chemically resemble endorphin, cocaine resembles dopamine, and alcohol emulates gamma aminobutyric acid.

When an individual regularly consumes drugs or alcohol without allowing adequate time between doses, the drug's surrogate chemical in the nervous system may become depleted or altered in such a manner as to produce a chemical imbalance. Ideally, when the person stops drinking alcohol or taking drugs, his or her brain will be able to correct the imbalance. However, this will require a period of abstinence for the brain to start functioning properly again. This period is generally called withdrawal.

The abuse of alcohol contributes to many deaths per year in the United States. One of the most common drug overdoses leading to death is ingestion of a large amount of alcohol (alcohol poisoning). Chronic alcohol abuse leads to liver disease. Liver disease can be manifested as fatty change. Excessive alcohol ingestion for many years can lead to micronodular cirrhosis. A cirrhotic liver leads to portal hypertension and the complication of bleeding esophageal varices with massive, life-threatening gastrointestinal hemorrhage. There is also an increased risk for hepatocellular carcinoma arising in a cirrhotic liver. In the brain, alcoholism can lead to Wernicke's disease.

Are you ready for a USDOT Compliance Audit??

The USDOT has hired more investigators to conduct compliance reviews this year. Our Consortium developed a list of what the investigators would look for in a compliance review.

1. Driver qualification files for each driver
2. Federal Motor Carrier Safety Regulations (*each driver should have their own copy*)
3. Log books or time sheets (*hours of service*)
4. Preventive maintenance records for your vehicles
5. Post-trip inspection reports for each vehicle
6. Accident register
7. Hazardous materials training, shipping documents, knowledge of the Hazardous Materials Regulations, registration with the USDOT, placarding, etc.
8. Drug and alcohol testing records

Recordkeeping requirements for maintaining drug and alcohol testing records:

Indefinitely:

- Education and training for supervisors and drivers while during their employment with your company, plus 2 years afterwards. This includes reasonable suspicion training for supervisors/owners.

- Substance abuse policies should be kept for the lifetime of employees' employment plus two years afterwards.
- Collectors, breath alcohol technician and saliva test technician training records must be kept for the lifetime they are doing collections, plus 2 years afterwards. [These documents are kept by our Consortium's collection company, Consolidated Medical Services, and are available upon request.]

Five years:

- Annual drug and alcohol summaries for your employees that show how much testing and what kind of testing has been done. IMAWA provides these to you every year. These summaries also show if there were any positive results (alcohol or drug) and for what type of drugs they were positive.
- Alcohol test results of .02 or greater and verified positive drug tests.
- Documents generated to conduct a reasonable cause test on an employee.
- Documents determining that an employee has refused to test.
- Documents that either prove or do not prove the employee had a medical explanation for not being able to provide an adequate urine specimen (shy bladder) or an adequate breath test (shy lung).
- Documents from a Substance Abuse Professional stating the employee has followed the return-to-duty process (initial and follow-up evaluation letters).

- Follow-up drug and alcohol test results and all follow-up notices.
- Semi-annual laboratory statistical drug testing summaries.

Three years: Documentation of drug and alcohol testing information from the co/previous employer.

Two years:

- Random notices, custody and control forms for drug testing, and the alcohol testing forms.
- Any other record relating to the collection process must be kept.
- Documents relating to the inspection, maintenance and calibration of the evidential breath testing devices, and the manufacturer of the evidential breath testing devices. [These documents are kept by Consolidated Medical Services, our Consortium's collection company, and are available upon request.]

One year: Negative and canceled drug test results and alcohol test results of less than .02 alcohol concentration.



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