

POLICY

Category:	CHST System Documents Administrative HR Policies Human Resources	Origination Date:	07/01/1990
Title:	HR 3.08 Drug Free Workplace: Reasonable Suspicion, Impairment, and Drug Diversion Management	Effective Date:	12/13/2021
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POLICY STATEMENT:

Children's Health System of Texas (CHST) and its Affiliates (collectively, Children's HealthSM) has established processes to maintain a safe and healthy work environment for our patients, employees, volunteers, and visitors by preventing the abuse, misuse or diversion of drugs or alcohol on the premises of Children's Health, and preventing any staff member from being at work while impaired by drugs (illegal or prescribed), alcohol or illness

DEFINITIONS:

- A. **Conditional Work Agreement** is an agreement that lists the requirements that a staff member must agree to follow contingent upon his/her self-disclosure of drug/alcohol use/abuse or illness causing impairment, consent to drug testing as appropriate, and a commitment to rehabilitation. A conditional work agreement may include but is not limited to participation in assistance programs sponsored by or affiliated with licensing agencies (e.g., Texas Peer Assistance Program for Nurses (TPAPN); Texas Physician Health Program (TXPHP) for physician assistants, respiratory care practitioners and radiologic technologists; Professional Recovery Network (PRN) for pharmacists and dental professionals, etc. Nothing in a conditional work agreement or in any other section of this policy shall be construed to constitute a contract for employment between a staff member and Children's Health.
- B. **Controlled substance:** Medications classified as Schedule I through V by the Federal Drug Enforcement Agency and/or applicable state law:
- C. **Diversion** means intentionally and without proper authorization using or taking possession of a drug from Children's Health supplies, patients, or through the use of Children's Health prescription, ordering, or dispensing systems, whether for personal use, sale or other purpose. Examples of diversion include, but are not limited to:
- Medication theft from medication management system(s);
 - Theft or manipulation of medication that is prescribed for, withdrawn for or being administered to a patient;
 - Using or taking possession of a medication without a valid order or prescription;
 - Forging or inappropriately modifying a prescription; and
 - Using or taking possession of medication waste, i.e., left over medication.

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- D. **Drugs** include controlled substances, medication prescribed by a physician, medication not prescribed by a physician including “over the counter” medication, illegal drugs under federal law, inhalants (such as anesthesia gas or glue), and alcohol/alcoholic beverages.
- E. **Drug paraphernalia** includes any item used to administer, transfer, or store a drug.
- F. **Drug Test** is any test administered to determine the presence or absence of a drug (including alcohol) or a drug metabolite in a person’s urine or blood. Drug tests may include analysis of urine, blood or breath. Reasonable suspicion drug tests will be performed at Children’s Health expense. The cost of random drug testing under a conditional work agreement may be the responsibility of the staff member.
- G. **Illegal Drugs** include any drug that:
- Is not legally obtainable;
 - May be legally obtainable but is not legally obtained; **or**
 - Is being used in a manner or for a purpose other than as prescribed.
- H. **Impaired, Impairment** is defined as the state of being mentally or physically diminished, weakened or damaged, either mentally or physically; the condition of being unable to perform as a consequence of physical or mental unfitness; any behavior or condition observed by others that negatively impacts performance or jeopardizes safety.
- I. **Medical Review Officer (MRO)** is a person who is a licensed physician and who is responsible for receiving and reviewing laboratory results generated by an employer's drug testing program and evaluating medical explanations for certain drug test results.
- J. **Prescription medication** is a medication that according to federal law requires a prescription prior to dispensing.
- K. **Reasonable Suspicion** is suspicion based on specific personal observation by the supervisor and/or a reliable witness of behavior or conduct consistent with drug or alcohol abuse. This behavior or conduct includes but is not limited to the following:
- Work-related accident
 - Drowsiness or sleepiness
 - Odor of alcohol or drugs on breath or clothing
 - Slurred or incoherent speech
 - Confusion

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- Unusually aggressive or hostile behavior
- Unexplained change in mood
- Lack of manual dexterity
- Lack of coordination
- Excessive sloppiness
- Illegible or errant charting/writing
- Leaving the work area for extended and unexplained reasons
- Signs of drug diversion (as defined above)
- Possession of drug paraphernalia

Reasonable suspicion may also include the discovery of a criminal charge or conviction pertaining to drug or alcohol violations.

L. **Reporting to Work/ Performing Job Duties** is defined as when staff members are at any time:

- Located on Children's Health premises, including parking lots and various hospital locations
- Working on behalf of the Children's Health at any other location, including in a remote/flexible work arrangement
- Driving or riding as a passenger in a Children's Health vehicle, or driving/riding in a personal vehicle while in the course and scope of Children's Health business, or
- Acting on behalf of the Children's Health in their role as staff members, whether on or off Children's Health premises.

M. **Staff Member** includes any leader, employee, contractor, consultant, volunteer, student or any other individual who provides care, treatment or services at, for or on behalf of Children's Health. This definition excludes Medical/Dental Staff, who are covered under Medical-Dental Staff policy, [MD 1.11 Health and Impairment](#).

N. **Under the Influence** is defined as the state a person is in after consuming alcohol or drugs that interfere with sound judgment and acceptable behavior.

O. **Vendor** is defined as any company, and its employees or representatives, from which Children's Health purchases goods or services including repairs

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PROCEDURE:

- A. Children's Health has a vital interest in maintaining a safe and healthy work environment for its patients, employees, volunteers and visitors. In view of this interest, Children's Health maintains this policy for the elimination of drug use and abuse, impairment and drug diversion in the workplace.
- B. Children's Health reserves the right to require a drug/alcohol test of any staff member who is reasonably suspected of being under the influence of drugs or alcohol; being impaired at work; diverting drugs, or who may be involved in a work-related accident or injury.
- C. In addition, pre-employment drug testing is conducted to reduce the probability of hiring individuals whose use of any drugs may impair their ability to safely perform their jobs, adversely affect the quality of patient care, and/or compromise the safety of Children's Health visitors and other employees.
- D. Children's Health also reserves the right to search a staff member; his/her work area, and his/her property as set forth below and in accordance with [AD 7.18 Search and Surveillance](#).
- E. This policy is not intended and will not be used to discriminate based on race, color, religion, sex, national origin, age, disability, gender identity or expression, sexual orientation, veteran or military status, genetic information, marital status, or any other non-job related characteristic in accordance with [HR 1.02 Equal Employment Opportunity](#).
- F. In light of the above statement, Children's Health prohibits any of the following actions:
- Reporting to work or performing job duties while under the influence of illegal drugs or alcoholic beverages;
 - Reporting to work or performing job duties while under the influence of prescription or over-the-counter drugs, when there is any possibility that such use may impair the staff member's ability to safely perform his or her job, adversely affect the quality of patient care or other work, and/or compromise the safety of Children's Health visitors and other staff members;
 - Reporting to work or performing job duties in an impaired state due to illness, injury or any other reason;
 - Diverting drugs for personal use, sale or any other purpose;
 - The possession, manufacture, transportation, dispensing, use or sale of illegal drugs or alcoholic beverages*, and/or related paraphernalia, on Children's Health premises or while acting in the course and scope of employment at Children's Health. (*The

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prohibition against possession of alcoholic beverages does not apply to unopened gifts of alcohol that are removed from the premises in a timely manner.);

- The possession, manufacture, transportation, dispensing, use or sale of illegal drugs or alcoholic beverages, and/or related paraphernalia where such action would affect the reputation of Children's Health to the general public or threaten its integrity. This section also applies to staff members when they are not in the course and scope of employment or not on Children's Health premises.

G. The prevention of drug use/misuse, impairment or drug diversion is essential to the safety of Children's Health patients and is the responsibility of every staff member. All staff members have a duty to report known or suspected incidents of drug use/misuse, impairment or diversion under Children's Health safety and quality standards. Furthermore, licensed staff members have a duty to report as a condition of holding their license.

Reasonable Suspicion Drug Testing

A. Reasonable suspicion of drug use/misuse, impairment or diversion may arise from a variety of circumstances including, but not limited to:

- An observed incident of probable drug use/misuse, impairment or drug diversion;
- Suspicious activity identified during routine monitoring and/or proactive surveillance;
- Self-disclosure of drug use/misuse, impairment or drug diversion; and
- Notification of suspected drug use/misuse, impairment or drug diversion from an external source, such as local law enforcement or a family member.

B. Children's Health does not permit retaliation of any staff member who reports suspected drug use/misuse, impairment or drug diversion honestly and in good faith.

C. Children's Health leadership will be notified promptly of any incidents of suspected drug use/misuse, impairment or drug diversion in accordance with the procedure set out below. Drug use/misuse, impairment or drug diversion by a Children's Health staff member will be grounds for corrective action up to and including termination of employment/assignment. Any staff member who is found to be engaged in the sale, possession, distribution, dispensing or manufacture of drugs or related paraphernalia may be subject to immediate discharge.

D. A staff member who indicates that he/she has a drug or alcohol problem prior to any incident occurring or prior to confirmation of a positive test result may be offered the opportunity to seek treatment and rehabilitation. A staff member returning from leave due to this circumstance will be subject to a conditional work agreement including, but not limited to,

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random drug testing for at least one year, documentation of follow up care, appointments with employee health personnel, or other monitoring requirements determined to be appropriate.

- E. Children's Health will report staff members who receive a positive drug or alcohol test result or who are otherwise found to be in violation of licensing standards to the appropriate licensing authority as required by state or federal law or regulations. Children's Health may cooperate with programs for rehabilitation of impaired professionals if, in its judgment, patient, visitor and/or staff member safety are not compromised.
- F. Children's Health reserves the right to report any suspected violation of this policy to law enforcement agencies.
- G. Children's Health reserves the right to terminate a staff member who is found to be in violation of this policy.
- H. Staff members who fail to abide by the terms of a conditional work agreement will be discharged from employment. No second chances will be given.
- I. Data relating to drug use/misuse, impairment or drug diversion reports and investigations will be analyzed to identify trends and opportunities for potential improvement in the medication management process.
- J. Nothing in this policy shall be construed to constitute a contract for employment at Children's Health.

Drug-Related Criminal Convictions

A staff member who is officially charged with or convicted of violating any criminal drug statute must notify his/her supervisor within three days of such charge. Criminal drug statutes include federal, state, and local laws involving the use/possession/sale/control of drugs (including alcohol or controlled substances). Failure to report such charge or conviction will result in corrective action up to and including termination from employment. A staff member so charged or convicted of violating any criminal drug statute may be subject to a drug test and corrective action, including termination.

Searches

Investigations of suspected drug use/misuse, impairment and drug diversion may include a search of all hospital property, with or without notice to or consent from any staff member/others. Hospital property includes but is not limited to lockers, desks, file cabinets,

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closets, storage areas, etc. These areas are Children's Health property and not considered the private area of individual staff members. (See [AD 7.18 Search and Surveillance](#))

Pre-employment Drug Testing

- A. All offers of employment are contingent upon receipt of negative drug test results. Candidates whose drug test results in a confirmed positive finding are eliminated from further consideration for employment. In addition, the candidate shall be ineligible for employment at Children's Health for at least one year from date of the failed drug test. Positive drug tests may not be waived by a hiring manager.
- B. Refusal by a candidate to submit to a drug test will result in the candidate being ineligible for employment.
- C. HR recruiters are responsible for communicating confirmed positive test results to candidates as well as notifying the appropriate hiring manager.

Confidentiality

Except as required for administration of this policy and/or for determination regarding corrective action, Children's Health will strive to keep information related to drug testing of staff members confidential, consistent with the provisions of applicable law. The Occupational Health and Wellness department is responsible for maintaining records and results of drug tests and for ensuring privacy and confidentiality. These records are kept separate from the personnel files. The willful disclosure of drug test results to unauthorized persons is grounds for corrective action up to and including termination.

Process

Drug Test Results (Via Urinalysis and Breathalyzer for alcohol)

- A. Children's Health utilizes collection facilities that follow the National Institute on Drug Abuse (NIDA) guidelines. Children's Health drug tests include urinalysis for the detection of drugs and breath alcohol analysis for the detection of alcohol. Drug tests include integrity checks for Creatinine and pH levels. For reasonable suspicion testing, the drug test order may include additional drugs and substances as appropriate, based on the circumstances surrounding the reasonable suspicion.
- B. Drug test results that fall outside of the acceptable ranges for Creatinine or pH are considered adulterated or invalid and will be forwarded to the Medical Review Officer (MRO) for review and verification. If the MRO does not issue a determination of "positive" on an

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adulterated/invalid drug test, the candidate/staff member may be offered one more drug test opportunity.

- C. Drug test results that fall outside of the cut-off levels for drugs being tested will be sent for a separate confirmatory test by a Gas Chromatography Mass Spectrometry method. If the confirmatory test results remain positive, they will be sent to an independent MRO who will contact the donor to determine if there is a valid reason for the drug in question being present in the specimen. If the MRO determines there is not a valid prescription or medical reason for the results, the test results will be reported as positive. If the MRO determines there is a valid prescription or medical reason for the results, the test result will be reported as negative.

Reasonable Suspicion – Drug Use/Misuse or Impairment

If a staff member reasonably suspects a staff member has used/misused drugs or is impaired, if the staff member has been involved in a work-related accident, or if the staff member is the operator of a CHST surface vehicle (including ambulances) and has been involved in a vehicular accident, the following procedures must be followed:

1. Immediately report the concerns to the operational leader and Administrative Supervisor (as appropriate). Contact the HR on-call consultant for guidance or direction. Whenever feasible, a written statement of the reasonable suspicion observations should be submitted to the operational leader.
2. The leader and/or Administrative Supervisor (as appropriate) will meet with the staff member to explain the concerns and obtain the staff member's consent to a drug test. The suspected staff member will be given a reasonable amount of time under supervision – up to 15 minutes - to consent to the drug test. Refusal to consent to a drug test will result in termination of employment.
3. The leader and/or Administrative Supervisor will contact the Security department for assistance in managing the meeting with the staff member and in transporting the staff member to the testing facility.
4. The leader and/or Administrative Supervisor will ensure that reasonable suspicion drug tests are completed as soon as possible, but no later than four (4) hours after initial observation of the incident, unless there are extenuating circumstances beyond the control of Children's Health.
5. Drug testing will be conducted at a Children's Health contracted facility during the testing facility's hours of operation. If the drug testing facility is closed, the contracted

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after-hours/on-call drug testing service will be notified, and the drug test will be conducted on Children's Health premises.

6. Children's Health will arrange for the staff member's transportation to and from the testing facility.
 - Security will transport the staff member to the facility.
 - Under no circumstances will a staff member suspected of drug use/misuse or impairment be allowed to drive him/herself to or from the testing facility.
 - The staff member's leader or appropriate designee (other than Security) should go with the staff member to the testing facility and remain with the staff member until the staff member is on their way home.
7. The leader or Administrative Supervisor will contact the staff member's emergency contact or other preferred contact to arrange for the staff member's transportation home after testing. If no one can be located, the leader or Administrative Supervisor will arrange for another means of transportation for the staff member (cab voucher, etc.).
8. A staff member who is required to submit to a drug test due to reasonable suspicion of drug use/misuse or impairment should be placed on paid administrative leave pending completion of the investigation. The leader or Administrative Supervisor will collect department property such as keys and staff member's ID badge and suspend the staff member's access to all network systems. The staff member may not return to work until the drug test results are received and appropriate action has been determined, as required in this policy.

Reasonable Suspicion – Diversion

If staff member reasonably suspects another staff member of diverting drugs, the following procedures must be followed:

1. Immediately report the concerns to the operational leader and Administrative Supervisor (as appropriate). Contact the HR on-call consultant for guidance or direction. Whenever feasible, a written statement detailing the reasonable suspicion diversion concerns should be submitted to the operational leader.
2. Upon notification of suspected drug diversion, the operational leader and/or Administrative Supervisor will immediately perform an initial safety assessment and promptly call the Senior Director of Pharmacy or Pharmacy Manager on call.

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3. The leader's/Administrative Supervisor's initial safety assessment must include:
 - Whether any patient has been harmed or placed at risk of harm, and the actions taken to treat the patient or remove the risk of harm
 - If a patient has been harmed or placed at risk of harm, the operational leader will notify the patient's attending physician
 - Whether the suspected drug diversion also involves observed or suspected drug use/misuse or impairment. If yes, follow the procedure for Reasonable Suspicion-Drug Use/Misuse or Impairment, above.
5. A staff member suspected of drug diversion will be placed on paid administrative leave pending completion of the investigation. The leader or Administrative Supervisor will collect department property such as keys and staff member's ID badge and suspend the staff member's access to all network systems. The staff member may not return to work until the investigation is concluded and an appropriate course of action has been determined, as required in this policy.
6. The suspected diversion will be investigated using available resources to include Pharmacy, Leadership, Legal, Human Resources and Security. If the investigation concludes that drug diversion has occurred or probably occurred:
 - The investigation may be expanded to determine if there have been any additional instances of diversion by the same staff member.
 - A medical records review will be conducted to identify all patients who may have been impacted by the diversion. If additional patients are identified as having been harmed or placed at risk of harm, actions will be taken to treat the patient(s) or remove the risk of harm.
 - The appropriate billing department will be notified to determine whether modifications should be made to bills relating to affected medical care.
7. If the investigation concludes there is sufficient evidence that a staff member has diverted drugs, the employee will be subject to corrective action. In most cases the expected outcome will be termination of employment/assignment. Such action may be taken regardless of whether the diversion occurred within the scope of employment or training, or while the employee was off duty as a patient or visitor.
8. Termination of employment/assignment due to drug diversion will be recorded in the staff member's employment record. The specific reason for dismissal will be reported to Group One and reflected on the staff member's employment history.

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9. If the investigation concludes there is sufficient evidence that a controlled substance has been diverted by a staff member or any other person (e.g., patient or visitor), the Senior Director of Pharmacy will ensure that appropriate reports are made to the Drug Enforcement Agency (DEA) and the Board of Pharmacy within the required timeframe for reporting.
10. If the investigation concludes there is sufficient evidence that a controlled substance has been diverted by a staff member or any other person (e.g., patient or visitor), the Security department, in collaboration with the Legal Department, may report the diversion to local law enforcement authorities, depending on the details of the case. This report may be made regardless of whether diversion occurred within the scope of a staff member's employment, or while the staff was a patient or visitor.
11. The Legal Department will evaluate all incidents of drug diversion to determine whether additional reports to external agencies should be made.
12. When reporting incidents of drug diversion by a patient, the report will describe the facts of the diversion and will not disclose additional information regarding the patient's medical history, condition, diagnoses, or treatment.
13. In collaboration with the Legal Department, the following individuals will report drug diversion by licensed or registered health care providers to the appropriate State licensing board:
 - The Chief Nursing Officer and/or Associate Chief Nursing Officer will report drug diversion by nurses.
 - The applicable operational leader will report drug diversion by all other licensed or registered health care providers.
14. If any patient is harmed by drug diversion, the patient/patient family will be informed of the circumstances of the drug diversion and its impact on the patient. The patient's attending physician will be responsible for ensuring that this communication occurs.
15. If drug diversion is confirmed but it is unclear whether the diversion caused patient harm or placed one or more patients at risk of harm, the patient's attending physician, in collaboration with the Legal Department and Leadership, will determine whether patient notification will serve the best interests of potentially affected patients.
16. The Pharmacy department will distribute a report of each incident of drug diversion to the designated individuals within Children's Health.

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17. The Pharmacy department will perform the following functions:

- Collect and analyze drug diversion data to identify trends and opportunities for improvement in medication management processes; and
- Share drug diversion data with Pharmacy leadership, the Therapeutics Committee, and other patient safety and/or quality committee as appropriate to facilitate the organization's management of medication management processes.

Conditional Work Agreement

- A. If a staff member comes forward and admits to substance use/misuse or impairment before any concerns of reasonable suspicion or possible diversion have been raised, Children's Health will refer the staff member to the Employee Assistance Program or other appropriate treatment provider. Self-reporting staff members will be required to consent to a conditional work agreement in order to remain employed at Children's Health.
- B. If a staff member suspected of drug use/misuse or impairment voluntarily admits to same prior to drug testing and consents to a drug test, the staff member may, depending on the details of the case, be given an opportunity to consent to a conditional work agreement after appropriate treatment.
- C. If the investigation concludes there is sufficient evidence that a controlled substance has been diverted by a staff member, the staff member will not be eligible for a conditional work agreement.

SOURCES:

1. Related Policies

[AD 7.18 Search and Surveillance](#)

[HR 1.02 Equal Employment Opportunity](#)

[HR 2.03 Employment Process](#)

[HR 3.02 Work and Conduct Principles for all Employees](#)

[MD 1.11 Health and Impairment](#)

2. Joint Commission Manual

MM.03.01.01; MS.11.01.01

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3. Medicare Conditions of Participation

§482.25(b)(2)(i)

§482.25(b)(2)(iii)

4. State or Federal Statute(s) or Regulation(s)

Drug Free Work Place Act of 1988

5. References

Professional Recovery Network (PRN)

Texas Peer Assistance Program for Nurses (TPAPN)

Texas Physician Health Network (TXPHN)

6. Keywords

Drug free workplace, drug testing, reasonable Suspicion

7. Quick Reference Guides links, Flowcharts, and Job Aids

None