



**CUMBERLAND HOUSING**

**Unlocking the Doors for Your Future**

# DRUG FREE WORKPLACE POLICY

## **NOTICE OF TESTING**

This policy will act as notice of drug and alcohol testing as prescribed in the Drug-Free Workplace Act of 1986. This policy revision replaces any previous Drug and Alcohol Testing Policy prior to the effective date shown below.

## **INTENT**

The employees of the Housing Authority of the City of Cumberland and the Cumberland Housing Alliance, hereafter collectively referred to as Cumberland Housing, are our most valuable resource and it is our goal to provide a healthy, satisfying working environment, which promotes personal opportunities for growth. In meeting these goals, it is our intent to:

1. Assure that employees are not impaired in their ability to perform assigned duties in a safe, productive, and healthy manner;
2. Create a workplace environment free from the adverse effects of drug abuse and alcohol misuse;
3. Prohibit the unlawful manufacture, distribution, dispensing, possession, or use of controlled substances.

## **PURPOSE OF EMPLOYEE DRUG AND ALCOHOL TESTING**

This document provides a uniform policy concerning the testing of employees or applicants for employment to detect individuals having drugs or alcohol in their system. The purpose of such testing is to provide, in the interest of the safety of employees and the general public, work and service environments that are free from the effects of drug and alcohol abuse. Cumberland Housing is committed to providing a safe work place for its employees that is free of the effects of substance abuse.

The use of any drug, including alcohol, can interfere with the safe and efficient functioning of the Cumberland Housing personnel; therefore, drug or alcohol abuse is a matter of Cumberland Housings' concern and will be dealt with in an appropriate manner.

Cumberland Housing expects employees to report for work in condition to perform their duties. On-the-job involvement with drugs and/or alcohol is a violation of this policy. Cumberland Housing also recognizes that employee off-the-job involvement with drugs and alcohol can have an impact on the work place and our ability to accomplish the goal of a safe, effective, drug and alcohol- free work environment.

## **APPLICABILITY**

This policy applies to all employees, including paid part-time employees, temporary employees, volunteers, contract employees and contractors when they are performing work for Cumberland Housing. They also apply to off-site lunch periods or breaks when an employee is scheduled to return to work.

On - duty time is defined as all time from the time an employee begins to work, or is required to be in readiness to work, until the time the employee is relieved from work.

The policy requires that no employee may consume alcohol within 4 hours of going on duty. Therefore, the period of the workday for which you must be in compliance would be 4 hours prior to actually reporting to work and during all times thereafter while on duty or available to be on duty.

## **PROHIBITED SUBSTANCES**

"Prohibited substances" addressed by these procedures include the following:

1. **Illegally Used Controlled Substances or Drugs**  
Any illegal drug or substance identified in Schedules I through V Section 202 of the Controlled Substance Act (21 U.S.C. 812), as further defined by 21 CFR 1300.11 through 1300.15. This includes, but is not limited to: marijuana, amphetamines, opiates, phencyclidine (PCP), and cocaine, as well as any drug not approved for medical use by the U.S. Drug Enforcement Administration or the U.S. Food and Drug Administration. Illegal use includes the use of any illegal drug, misuse of legally prescribed drugs, and use of illegally obtained prescription drugs.
2. **Legal Drugs**  
Employees who are taking prescription or non-prescription lawful drugs that may affect the performance of their job duties must report such usage to their immediate supervisor before beginning their workday. Such drugs used on the job may be determined to be allowable drugs if the medical review officer has determined that the use of the drug is consistent with safe performance of the employee's duties and the drug is being used at the prescribed dosage.

3. Alcohol  
The use of beverages containing alcohol or substances including any medication, mouthwash, food, candy, or any other substance such that alcohol is present in the body while performing business is prohibited. The concentration of alcohol is expressed in terms of grams of alcohol per 210 liters of breath as measured by an evidential breath-testing device.

## **PROHIBITED BEHAVIOR**

1. Employees shall not report for duty or remain on duty while having an alcohol concentration of 0.02 or greater.
2. Employees shall not possess alcohol while on duty.
3. Employees shall not use alcohol while performing job functions.
4. Employees shall not report for duty, remain on duty, or perform job functions after having tested positive for a controlled substance.
5. Employees shall not use, manufacture, distribute, dispense or possess controlled substances while on duty.
6. Refusal by an employee to submit immediately to a drug and/or alcohol test for reasonable suspicion, post-accident, or random testing when requested is considered a violation of this policy.
7. All employees are required to notify Cumberland Housing of any criminal drug statute conviction for a violation occurring in the workplace within five days after such conviction. Failure to comply with this provision shall result in disciplinary action, up to and including termination.

## **DEFINITIONS**

1. "Alcohol" - means the intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohol including methyl or isopropyl alcohol. References to use or possession of any beverage, mixture or preparation containing ethyl alcohol (including any medication containing alcohol).
2. "Alcohol Test" - A test conducted by a Breath Alcohol Technician, using an Evidential Breath Testing Device to measure the amount of alcohol concentration in a volume of breath, or any other test used to detect the presence of alcohol that is approved by the state of Maryland.
3. "Alcohol Use" - The consumption of any beverage, mixture, or preparation, including any medication, containing alcohol.

4. "Breath Alcohol Technician (BAT)" - means an individual trained to proficiency and certified in the use of an evidential breath testing device.
5. "Canceled Test" - means a test that has been declared invalid by a Medical Review Officer (MRO) for drug testing or for alcohol under 40.81 of 49 CFR.
6. "Confirmation Test" - For alcohol testing, a confirmation test means a second test following a screening test with a result of 0.02 or greater, that provides a quantitative data of alcohol concentration. Confirmation of the screening test must be by an Evidential Breath Testing (EBT) device and must be capable of printing out each test result and air blank, and must sequentially number each test. For controlled substances testing, a confirmation test means a second analytical procedure to identify the presence of a specific drug metabolite which is independent of the screen test and which uses a different technique and chemical principle from that of the screen test in order to ensure reliability and accuracy. Gas Chromatography/Mass Spectrometry (GC/MS) is the authorized confirmation method for cocaine, marijuana, opiates, amphetamines, and phencyclidine.
7. "Controlled Substances/Drugs" - For purposes of these procedures, controlled substances or drugs are cocaine, marijuana, opiates, amphetamines, phencyclidine
8. "Controlled Substance (or Drug) Test" - A method for determining the presence of controlled substances in a urine sample using a scientifically reliable method.
9. "DHHS" - means the United States Department of Health & Human Services.
10. "Employee" - means any person employed by Cumberland Housing.
11. "Evidential Breath Testing Device (EBT)" - A device used for the evidential testing of breath.
12. Mandatory Testing- Testing that is conducted in addition to random drug testing to ensure that all employees receive at least one test in a two year period.
13. "Medical Review Officer (MRO)" - A licensed physician (medical doctor or doctor of osteopathy) responsible for receiving laboratory results generated by the drug testing program who has knowledge of substance abuse disorders and has appropriate medical training to interpret and evaluate an individual's confirmed positive test result together with his or her medical history and any other relevant biomedical information.
14. "Non-negative Test Result (alcohol breath test result)" – An alcohol breath test result between .02 and .039.

15. "Screening Test (also known as an "initial test")"-
  - In alcohol testing, a screening test means an analytical procedure to determine whether an employee may have a prohibited concentration of alcohol in his or her system.
  - In controlled substances testing, a screening test means an immunoassay screen (or other DHHS-approved test) to eliminate "negative" urine specimens from further consideration.
16. "Split Sample" - An additional sample collected with the original specimen, to be tested in the event the original specimen tests positive.
17. "Verified Negative Drug Test Results" - A drug test result reviewed by a medical Review Officer and determined to have no evidence of prohibited drug use.
18. "Verified Positive Drug Test Results)" - A drug test result reviewed by a Medical Review Officer and determined to have evidence of prohibited drug use.

## **CIRCUMSTANCES OF DRUG AND ALCOHOL TESTING**

Cumberland Housing will utilize six drug and/or alcohol screening situations.

1. Pre-employment Testing: All applicants shall undergo urine drug testing immediately following an offer for employment. Receipt of a negative drug test result is required prior to employment. If an applicant refuses to be tested or fails the pre-employment drug test, the applicant will be disqualified for employment for a period of six months. A negative pre-employment drug test is required prior to further consideration for employment.
2. Reasonable Cause: All employees may be subject to a fitness for duty evaluation, and urine and/or breath testing when there are reasons to believe that drug or alcohol use is adversely affecting job performance. A reasonable suspicion referral for testing will be made on the basis of documented objective facts and circumstances, which are consistent with the short-term effects of substance abuse. Examples of reasonable cause include, but are not limited to the following:
  - A. Physical signs and symptoms consistent with prohibited substance use.
  - B. Evidence of the manufacture, distribution, dispensing, possession, or use of controlled substances, drugs, alcohol, or other prohibited substances.
  - C. Occurrence of a serious or potentially serious accident that may have been caused by prohibited substance abuse or alcohol misuse.

- D. Fights (to mean physical contact), assaults, and flagrant disregard or violations of established safety, security, or other operating procedures.
3. Random: Conducted on all employees on a random, unannounced basis just before, during, or just after performance job functions. Each year, at least 5% of all employees will be tested for alcohol, and at least 50% will be tested for drugs. All employees will remain in the random selection pool at all times, regardless of whether or not they have been previously selected for testing.
  4. Return-to-duty: Employees who have previously refused to take a drug or alcohol test, or failed such a test, shall be tested for prohibited drug or alcohol use before they return to duty. The employee must first be certified by the Substance Abuse Professional (SAP) as capable of resuming duties. Any such employee, once returned to duty may be administered unannounced follow-up drug and alcohol tests for up to 60 months after their return to duty.
  5. Follow-up: Once allowed to return to duty, employees shall be subject to unannounced follow-up testing for at least 12 but not to exceed 60 months. The frequency and duration of the Follow-up testing will be recommended by the SAP as long as a minimum of six tests are performed during the first 12 months after the employee returns to duty. Follow-up testing is separate from and in addition to the random testing program.
  6. Work Related Accident: Conducted on all employees involved in a motor vehicle accident where they were driving a Cumberland Housing owned vehicle or other work related accidents requiring treatment while working for Cumberland Housing. The testing will be secondary to the treatment of injuries but is to be completed as soon after as possible by either the medical facility treating the employee or the testing facility used for routine drug and/or alcohol screening.
  7. Mandatory Testing: All employees are required to undergo at least one random drug test every two years. Any employee whose name has not been selected during the previous 24 months shall undergo a mandatory drug test. This test will be performed at a random time.

## **SUBSTANCES TO BE INCLUDED IN TESTING**

Alcohol (Ethanol), amphetamines, cannabinoids (marijuana), cocaine, opiates, phencyclidine (PCP), and their metabolites will be included. Because Cumberland Housing is concerned about the abuse of prescribed and over-the-counter medications as well as illegal drugs and alcohol, the above list may be expanded to include yet to be developed substances, changes in Cumberland Housing policy, or changes to Federal laws and regulations.

## DRUG TESTING PROCEDURES

Cumberland Housing shall identify and select only qualified medical facilities certified by DHHS/NIDA/SAMHSA to perform the urinalysis testing described by these procedures.

Appointments for urine collection for drug screens will be coordinated by Cumberland Housing depending on site location. The specimens will be collected at special facilities that optimize confidentiality. The collection facility must adhere to the collection provisions set forth in the "DHHS" regulations. A strict chain of custody will be maintained on the specimen as described in the DHHS Guidelines. In the event that a non-designated collection facility must be used, the supervising employee contacting the facility must insure that the facility is properly advised concerning the collection requirements as described in the "DHHS Guidelines." Record keeping and reporting of all drug testing and results shall be in strict accordance with Federal guidelines to protect the confidentiality of the employees.

## DRUG TESTING CUTOFF LEVELS

1. Initial Test
  - A. The initial test shall use an immunoassay that meets the requirements of the Food and Drug Administration for commercial distribution. The most current NIDA/SAMHSA cutoff levels shall be used when screening specimens to determine whether they are negative for these drugs. Current cutoff levels are:

<u>Initial Test Cutoff Levels</u>	<u>(ng/ml)</u>
Amphetamines	1,000
Barbiturates	300
Benzodiazepines	300
Cocaine Metabolites	300
Marijuana Metabolites (cannabinoids)	50
Methadone	300
Opiate Metabolines*	2000
Oxycodones	100
Phencyclidine	25
Propoxyphene	300
MDA (ecstasy)	500
Monoacetylmorphine	10

\*25 ng/ml if immunoassay specific for free morphine

- B. These cutoff levels are subject to change by the DHHS and/or the DOT as advances in technology or other considerations warrant.

2. Confirmation Test

A. All specimens identified as positive on the initial test shall be confirmed using gas chromatography/mass spectrometry (GC/MS) techniques using the most current NIDA/SAMHSA cutoff levels. The current cutoff levels are:

<u>Confirmatory Test Cutoff Levels</u>	<u>(ng/ml)</u>
Amphetamines (1)	500
Barbiturates	150
Benzodiazepines	150
Cocaine Metabolites (2)	150
Marijuana Metabolites (cannabinoids) (3)	15
Methadone	300
Opiate Metabolines*	2000
Oxycodones	100
Phencyclidine	25
Propoxyphene	150
MDA (ecstasy)	250
Monoacetylmorphine	10

(1) Specimen must also contain amphetamine at a concentration equal to or greater than 200 ng/ml.

(2) Benzoyllecgonine

(3) Delta-9 tetrahydrocannabinol-9-carboxylic acid.

B. These cutoff levels are subject to change by the DHHS as advances in technology or other considerations warrant.

3. Split Sample Testing

The employee may request, within 72 hours of notification of a positive test by the MRO, that the split sample be tested at a separate DHHS certified laboratory. This request must be made in writing to the MRO. The results of the split sample test shall be the final test results that are reported to the employer by the MRO. The cost for transportation and testing of the split sample is the sole responsibility of the employee and must be paid for in advance.

**EFFECTS OF ALCOHOL**

Alcohol is a socially acceptable drug that has been consumed throughout the world for centuries. It is considered a recreational beverage when consumed in moderation for enjoyment during social gatherings. However, when consumed primarily for its physical and mood altering effects, it is a substance of abuse. As a depressant, it slows down physical responses and progressively impairs mental functions.

1. Signs and Symptoms of Use:
  - Dulled mental processes
  - Lack of coordination
  - Odor of alcohol on breath
  - Possible constricted pupils
  - Sleepy or stuporous condition
  - Slowed reaction time
  - Slurred speech

(Note: Except for the odor, these are the general signs for any depressant substance.)

2. Health Effects

The chronic consumption of alcohol (average of three servings per day of beer (12 ounces), whiskey (1 ounce), or wine (6 ounce glass) over time may result in the following health hazards:

  - A. Decreased sexual functioning
  - B. Dependency
  - C. Fatal liver diseases
  - D. Increased cancers of the mouth, tongue, pharynx, esophagus, rectum, breast, and malignant melanoma
  - E. Kidney disease
  - F. Pancreatitis
  - G. Spontaneous abortion and neonatal mortality
  - H. Ulcers
  - I. Birth defects (up to 54% of all birth defects is alcohol related)
3. Social Issues
  - A. Two-thirds of all homicides are committed by people who drink prior to a crime.
  - B. Two to three percent of the driving population is legally drunk at any one time. This rate is doubled at night and on weekends.
  - C. Two-thirds of all Americans will be involved in an alcohol-related vehicle accident during their lifetimes.
  - D. The rate of separation and divorce in families with alcohol dependency problems is seven times the average.
  - E. Forty percent of family court cases are alcohol problem related.
  - F. Alcoholics are 15 times more likely to commit suicide than are other segments of the population.
  - G. More than 60 percent of burns, 40 percent of falls, 69 percent of boating accidents, and 76 percent of private aircraft accidents are alcohol related.
4. Workplace Issues
  - A. It takes one hour for the average person (150 pounds) to process one serving of an alcoholic beverage from the body.

- B. Impairment in coordination and judgment can be objectively measured with as little as two drinks in the body.
  - C. A person who is legally intoxicated is six times more likely to have an accident than a sober person is.
5. The Annual Toll
- A. 24,000 people will die on the highway due to the legally impaired driver.
  - B. 12,000 more will die on the highway due to the alcohol-affected driver.
  - C. 15,800 will die in non-highway accidents.
  - D. 30,000 will die due to alcohol-caused liver disease.

Up to another 125,000 will die due to alcohol-related conditions or accidents.

## **ALCOHOL TESTING PROCEDURES**

Alcohol testing will only be conducted using evidential breath testing devices in accordance with 49 CFR part 654.

Cumberland Housing will coordinate breath testing. The breath specimen will be conducted at a site that optimizes confidentiality. The collection site must adhere to the collection provision set forth in 49 CFR Part 654. A strict change of custody will be maintained on the specimen as described in the DOT Guidelines. All record keeping will be in strict accordance with Federal Regulations.

Alcohol breath testing will be performed in the following manner:

1. Screening Test  
The initial test shall be done using an EBT. If the initial test results are less than .02 alcohol concentration, the results are considered negative and will be reported by the BAT as such. If the initial test results are .02 or greater, a second or confirmatory test must be conducted.
2. Confirmation Test  
The confirmatory test must be conducted on the same EBT as the initial test. Before the confirmatory test may be given, a minimum of 15 minutes and maximum of 30 minutes must have passed since the initial test was performed. During this period, the employee should avoid any actions that could increase mouth alcohol. The 15-30 minute wait period is to ensure that the presence of mouth alcohol does not artificially raise the test result.

Only the results of the confirmatory test shall be reported, irrespective of the results on the initial test. If the results of the initial and confirmatory tests are not identical, the confirmation test result is deemed to be the final test result.

If the result of the confirmatory test is less than .02 alcohol concentration, a negative result shall be reported by the BAT.

If the result of the confirmatory test is .02 or greater but less than .04 alcohol concentration (non-negative results), the employee must be removed from his/her position for eight hours or longer and be subject to disciplinary measures up to and including termination.

If the results of the confirmatory test show an alcohol concentration of .04 or greater, the employee must be removed from his/or her functions. See Section Positive Test/Refusal to Test.

### **POSITIVE TEST/REFUSAL TO TEST**

A positive substance abuse test is a violation of Cumberland Housing Policy. Any employee, who refuses to submit to a drug and/or alcohol test, will be considered to have failed the test. Failure to comply with the request for drug/alcohol testing will be just cause for termination.

If the medical review officer reports a positive test for drugs, it is understood that the screening test was positive and a second confirmatory test, based on a different scientific principle was also positive. The acceptable method of confirmation is: gas chromatography/mass spectrometry (GC/MS). Failing a drug test will result in termination of employment.

If a positive test for alcohol (.04 or above) is reported, it is understood that the positive test was the result of the confirmation test on an EBT. Failing an alcohol test will result in termination.

### **BEHAVIOR THAT CONSTITUTES A REFUSAL TO SUBMIT TO A TEST**

Behavior that constitutes a refusal to submit to a test includes, but is not limited to, the following:

- Refusal to take the test.
- Inability to provide sufficient qualities of breath or urine to be tested without a valid medical explanation.
- Tampering with or attempting to adulterate the specimen or collection procedure.
- Not reporting to the collection site in the allotted time.
- Leaving the scene of an accident without a valid reason before the test has been conducted.

### **CONDITION OF EMPLOYMENT**

Participation in Cumberland Housings' Drug and Alcohol Testing program is a requirement of all employees and therefore, is a condition of employment.

## **CHANGES OR MODIFICATIONS**

Cumberland Housing reserves the right to change the provisions of this testing procedure. All personnel will be notified at least 15 calendar days prior to instituting the changes. Changes required by Federal, State and/or Local law will not require advance notification.

## **COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT**

(Excerpts taken from the February 15, 1994; Federal Register (59 FR 7311) for your reference. The Department referenced herein refers to the US DOT. Employer refers to Cumberland Housing).

The Americans with disabilities Act of 1990 (ADA) does not, in any way, preclude or interfere with the employer's compliance with the Department's new or existing drug and alcohol testing regulations. However, Title I of ADA, which prohibits discrimination against a "qualified individual with a disability," may affect the personnel actions an employer may wish to take with respect to some individuals who test positive for drugs or alcohol, or otherwise violate the prohibitions of the Department's drug and alcohol rules.

The ADA specifically provides that an employee or applicant who is currently engaging in the illegal use of drugs is not a "qualified individual with a disability." It is clear that an individual who has a positive test result on a drug test is currently engaging in the illegal use of drugs. Therefore, under Title I, an employer may discharge or deny employment to an individual who has a positive result on a drug test.

Unlike the situation with respect to current use of illegal drugs, the use of alcohol contrary to law, Federal regulation, or employer policy does not deprive an individual of status as a "qualified individual with a disability" that he or she would otherwise have under Title I. An individual is protected by Title I, however, only if the individual has a disability in the first place. While, as the EEOC notes in its Title I regulation, "individuals disabled by alcoholism are afforded the same protections accorded other individuals with disabilities" (56 CFR 35752, July 26, 1991), not all individuals who use alcohol in violation of the law, Federal regulations or employer policy are "disabled by alcoholism."

Under Title I, an employer may hold an employee who engages in the illegal use of drugs or who is an alcoholic to the same qualification standards for employment or job performance as it holds other employees, even if the unsatisfactory performance or behavior is related to the drug use or alcoholism of the employee.

It should also be pointed out that the ADA does not preclude an employer from disciplining or dismissing an employee who commits a violation of the employer's conduct and performance standards, even if the individual is an alcoholic or has another disability.

## **SELECTED MEDICAL FACILITY**

Cumberland Housing has selected the Western Maryland Health System, Occupational Health Division to perform the drug and/or alcohol screening as it is described in this policy. It is understood that this facility is a qualified medical facility certified by DHHS/NIDA/SAMHSA to perform the urinalysis testing described by these procedures and to serve as a collection site adhering to the collection provision set forth in 49 CFR Part 654.

1. Employee selection for random screenings will be performed by the medical facility with notification made to the Executive Director.
2. Employees selected for screening will have 24 hours to report to the medical facility.
3. Results of drug and/or alcohol screening will be mailed to the Executive Director and placed into the employee's medical file.

This policy was adopted by the Board of Commissioners for the Housing Authority of the City of Cumberland at their Board meeting held on March 16, 2016.