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<b>Section-11 Human Resources</b>	<b>OP-110218</b>	<b>Page: 1</b>	<b>Effective Date: 12/07/2017</b>
<b>Employee Medical Exams/Inquiries and Records</b>	<b>ACA Standards: 2-CO-1C-09-01, 4-4054, 4-ACRS-7E-03, 4-APPFS-3E-03</b>		
<b>Joe M. Allbaugh, Director Oklahoma Department of Corrections</b>		<b>Signature on File</b>	

## **Employee Medical Exams/Inquiries and Records**

This procedure is established to promote a safe and healthful working environment for the agency’s employees by ensuring that employees are fit for duty, both physically and mentally, and capable of performing essential job functions in a safe, appropriate and effective manner.

This procedure is not intended to limit the agency’s ability to discipline employees in accordance with its policies and procedures, to refer employees to an Employee Assistance Program, or to enforce policies and procedures pertaining to workplace violence, employee drug and alcohol testing, leave programs, workers’ compensation and employee health evaluations.

For the purpose of this procedure, the definition of health care provider is the same as the definition provided in [OP-110355](#) entitled "Procedures for Employee Attendance and Leave."

I. Responsibilities

A. Employees

1. Employees will report to work fit for duty and capable of safely performing their essential job functions.
2. Employees will respond appropriately to requests for fitness for duty examinations (FFDE) to include medical information and medical certification regarding their ability to work or statements from health care providers relevant to job accommodations.

"Responding appropriately" includes: obtaining requested medical exams, information, certification or statements from health care providers with relevant information regarding the employee's fitness, ability to work and medical condition.

B. Supervisors

1. Requests for employee medical information must be in accordance with this procedure and all applicable laws. Medical inquiries/examinations of employees must be job related and consistent with business necessity.
2. Employment records containing medical information are confidential and must be maintained in accordance with this procedure and applicable law.

II. Medical Certification/Return To Work from FMLA Leave (29 CFR 825.310)

A. Applicability

Employees returning to work after FMLA absence due to their own serious illness must provide medical certification utilizing the "FMLA Return to Work Medical Certification" ([Attachment A](#), attached) regarding their abilities to perform essential job functions (fitness for duty) prior to resuming job duties.

1. Certification may be requested only if the employee was provided notification of this requirement in accordance with [OP-110355](#) entitled "Procedures for Employee Attendance and Leave."
2. Certification will not be required in the event the FMLA leave was taken intermittently.

3. Certification may be waived when the employee's serious health condition is not an issue in the performance of essential job functions.

B. Medical Certification Form/Attachments

The facility/district/unit human resources management specialist (HRMS) will furnish each employee on FMLA leave (due to the employee's serious illness) a copy of the employee's job family descriptor, any other information relevant to the job's requirements and [Attachment A](#) entitled "FMLA Return to Work Medical Certification."

C. Medical Certification Process

1. Prior to resuming work activities, employees will provide medical certification regarding their ability to work from their health care provider.
2. Employees will not be prevented from resuming job duties if the required certification is provided.
  - a. If the employee has authorized contact with his/her health care provider, the director of Human Resources or chief medical officer (CMO) may contact the employee's health care provider for purposes of authentication and clarification, only as it pertains to the serious health condition for which FMLA leave was taken, of the employee's fitness to return to work.
  - b. Under no circumstance may the employee's direct supervisor contact the employee's health care provider.
3. Employees who return to work with limitations will be provided reasonable accommodation in accordance with [OP-110345](#) entitled "Workers' Compensation Insurance and Accommodations for Injured/Impaired Employees."
4. Employees are responsible for all costs associated with providing return to work medical certifications.
5. The agency is not permitted to obtain second or third opinions.
6. All medical information obtained will be maintained in the employee's confidential medical file.

III. Medical Inquiries/Reasonable Accommodation

A. Applicability

Employees who are unable to continue performing essential job functions due to disability or impairment will be provided reasonable accommodation in accordance with [OP-110345](#) entitled "Workers' Compensation Insurance and Accommodations for Injured/Impaired Employees." (2-CO-09-01, 4-4054, 4-ACRS-7E-03, 4-APPFS-3E-03)

Any request by an employee for an adjustment or a change at work for a reason related to a medical condition will be treated as a request for accommodation.

B. Medical Inquiries/Examinations and Attachments

When an employee requests accommodation and the need for accommodation is not obvious, the employee will be required to provide documentation that is sufficient to substantiate that the employee needs the accommodation requested.

Documentation is sufficient if it describes the nature, severity, and duration of the employee's impairment, the activity or activities that the impairment limits, the extent to which the impairment limits the employee's ability to perform the activity or activities and substantiates why the requested accommodation is needed to enable the employee to perform essential job functions.

1. The facility/district/unit may make medical inquiries of employees seeking reasonable accommodation due to a medical condition and/or require the employee to submit medical documentation from their health care provider.
2. The facility/district/unit will furnish the employee with an HCM or agency job description or other information pertinent to the physical or special requirements of the job and a copy of [Attachment B](#) entitled "Employee Request for Reasonable Accommodation" form (attached).
3. The employee is responsible for all costs associated with obtaining information from the employee's health care professional.
4. If the documentation provided by the employee's health care professional is insufficient, the facility/district/unit will provide the employee reasonable time to provide sufficient documentation.
5. The facility/district/unit may have the director of Human Resources or the chief medical officer review the medical information and, if necessary, upon the employee providing permission, contact the employee's health care provider.

6. The facility/district/unit may require that the employee be examined by a health care provider of the agency's choosing if:
  - a. The employee provides insufficient information which does not substantiate the existence of a disability/impairment and/or explain the need for reasonable accommodation and the employee does not respond in a timely manner to a request for additional information;
  - b. The employee's selected health care provider does not have the expertise to evaluate the employee's medical condition and the limitations it imposes;
  - c. If the employee does not provide permission for the CMO or director of Human Resources; or
  - d. Other factors indicate that the information provided is not credible or is fraudulent.

The agency pays all costs associated with a medical exam by a health care provider of its choosing.

Any health care provider selected by the agency will be provided a copy of [Attachment B](#) and any supporting medical documentation previously supplied by the employee.

7. All medical documentation received in support of a request for reasonable accommodation will be maintained in the employee's confidential medical file.

C. Refusal to Provide Reasonable Accommodation

Employees will be provided accommodation unless:

1. The employee fails to provide the requested supporting medical documentation;
2. The provided documentation does not support the need for accommodation; or
3. The requested accommodation presents an undue hardship to the agency or does not enable the employee to perform the essential functions of the job.

IV. Medical Exams/Fitness for Duty Exams

Prior to making medical inquiries or requiring an employee to submit to a medical exam, the facility/district/unit must document a reasonable belief, based on objective evidence, that the employee's ability to perform the essential functions of the job will be impaired by a medical condition or the employee will pose a direct threat because of a medical condition.

A. Reasonable Belief Based on Objective Evidence

1. Reasonable belief based on objective evidence includes the following:
  - a. Knowledge of an employee's medical condition and observation of performance/conduct problems which can be reasonably attributed to the medical condition; or
  - b. Observations of symptoms indicating that an employee may have a medical condition that will impair the employee's ability to perform essential job functions or pose a direct threat to the health or safety of self or others.
2. Information obtained from another person may be considered, if that information is reliable. Determining reliability includes consideration of how well the person providing the information knows the employee, the seriousness of the medical condition, the possible motivation of the person providing the information, how the person learned the information, and other evidence that bears on the reliability of the information.

B. Fitness For Duty Exams (FFDE)

1. The facility/district/unit head may request authorization for a fitness for duty examination by completing a "Request for Fitness for Duty/Medical Examination" form ([Attachment C](#), attached) and submitting through the appropriate director to the central Human Resources Unit for review. Prior to granting or denying approval, the director of Human Resources may assemble a review committee consisting of various agency staff which may include representatives from the General Counsel, the Health Services Division and the affected employee's chain of command.
2. The employee may be requested to provide medical documentation from a health care provider of his/her choosing unless there is a reasonable belief that the employee poses a direct threat.
3. The agency may require an employee, who it believes poses a direct threat to the health or safety of self or others, to be examined by a health care provider and/or licensed mental health professional of its choosing who has expertise in the employee's

specific medical condition and can provide medical information that allows the agency to determine the effects of the condition on the employee's ability to do the job.

- a. The exam must be limited to determining whether the employee can perform the job without posing a direct threat, with or without reasonable accommodation.
  - b. Employees will be notified of the requirement for such FFDE using [Attachment D](#) entitled "Order for Fitness for Duty Exam" form (attached).
4. The agency will pay for medical exams and/or psychological evaluations and all associated costs when the employee is required to go to a health care provider and/or mental health professional selected by the agency. Employees will be on work time during the scheduled examination.
  5. The health care provider will be provided [Attachment E](#) entitled "Fitness for Duty Exam," an HCM or agency job description and any other relevant information.
  6. Pending the completion of a "Fitness for Duty Exam" (FFDE), an employee may be relieved of specific job duties or required to remain off work when there is a possible threat to safety. Any change in job duties or requirement to remain off work must be in accordance with applicable Merit Rules and agency procedures.
  7. All acts or threats of workplace violence will be reported in accordance with [OP-110214](#) entitled "Workplace Violence."
  8. Requests for a "FFDE" will be initiated only by the employing facility/district/unit. When questions arise regarding an employee's ability to safely perform training activities, the employee will be directed to return to the employing facility/district/unit. The training unit will provide the hiring facility/district/unit with all available, relevant information.
  9. All documentation or information received from the medical/mental health care provider will be maintained in the employee's confidential medical file, with the exception of Fitness for Duty Evaluation Psychological Reports, which will be maintained by the director of Human Resources or his/her designee.

C. Failure to Comply With Request/Order for FFDE

1. An employee who fails to respond to a medical inquiry, or refuses to submit to a lawful medical/mental health examination, when such

inquiry is based on performance problems that are perceived to be due to a medical/mental health condition, may be disciplined for the performance problem in accordance with [OP-110415](#) entitled "Progressive Disciplinary Procedures."

2. An employee who fails to respond to a medical/mental health inquiry, or refuses to submit to a lawful medical/mental health exam, when such inquiry is based on a perceived, direct safety threat due to a medical/mental health condition, may be terminated for insubordination.

#### D. Not Fit for Duty

1. In the event the FFDE report or other medical/mental health care provider's statement indicates that the employee is not able to safely perform essential job duties/physical training requirements or poses a threat to others, the facility/district/unit will review the options available for reasonable accommodation in accordance with [OP-110345](#) entitled "Workers' Compensation Insurance and Accommodations for Injured/Impaired Employees" and this procedure.
2. Nothing in this procedure will prohibit the agency from taking appropriate disciplinary or administrative action, including termination.

#### V. Employee Medical Records

The employee medical records referenced in this procedure are employment records and do not contain any protected health information. Such employment records are not subject to Health Insurance Portability and Accountability Act (HIPAA) regulations.

##### A. Confidentiality of Medical Records

All medical information obtained concerning an employee, including any information voluntarily disclosed by an employee will be treated as a confidential record.

1. All employment related medical records/information will be filed separate from the regular personnel file and secured in locked cabinets within the human resources area.
2. Confidential employee medical records/information includes, but is not limited to requests for accommodation and supporting documentation, fitness for duty exams, results, and related documents and documents related to FMLA leave.



3. Records referring only to the use of sick leave (including medical appointment information) are not confidential medical records.

B. Record Maintenance

1. Active Records

Medical files for active employees will be maintained at the employing facility/district/unit by the HRMS or designee.

2. Inactive Records

- a. When employment with the agency terminates, the inactive medical file will be placed with the inactive personnel file and forwarded to the central Human Resources unit in accordance with [OP-110105](#) entitled "Employee Personnel Records."

- b. The central Human Resources Unit will maintain inactive medical files for five years and then destroy in accordance with the guidelines established by the Oklahoma Department of Libraries.

C. Disclosure of Information

1. Employees' medical information can only be disclosed on a business "need to know" basis and disclosures will be limited to the minimum information necessary to accomplish the intended purpose of the disclosure.
2. Supervisors and managers may be informed regarding necessary restrictions on work or duties of the employee and necessary accommodations; medical information may be given to, and used by, decision makers involved in the hiring process or provided to health care professionals and/or human resources professionals during the reasonable accommodation process.
3. First aid and safety personnel may be informed, when appropriate, if a medical condition might require emergency treatment.
4. Under no circumstances will co-workers be provided confidential medical information about another employee including any reasonable accommodations made.
5. Documents can be placed in the regular personnel file if all confidential medical information has been removed.

D. Employee Access to Medical Records/Information (76 O.S. § 19.A. and 43A O.S. § 1-109B)

1. Employees have the right to access any of their medical records/information on file with the agency except for psychological or psychiatric records.
2. The release of psychological or psychiatric records to the employee is subject to the review of the treating physician or practitioner to ensure such release is not reasonably likely to endanger the life or physical safety of any person. Employees requesting access to those records will be directed to obtain such records from the treating physician or practitioner.

VI. Employee Grievances

Employees who believe their medical records are improperly maintained or released may file a grievance in accordance with [OP-110205](#) entitled "Employee Grievance Resolution Procedures."

VII. References

Policy Statement No. P-110100 entitled "Uniform Personnel Standards"

OP-110105 entitled "Employee Personnel Records"

OP-110205 entitled "Employee Grievance Resolution Procedures"

OP-110214 entitled "Workplace Violence"

OP-110345 entitled "Workers' Compensation Insurance and Accommodations for Injured/Impaired Employees"

OP-110355 entitled "Procedures for Employee Attendance and Leave"

OP-110415 entitled "Progressive Disciplinary Procedures"

ADA

FMLA (29 CFR 825.310)

HIPAA

43A. O.S. § 1-109

76 O.S. § 19

VIII. Action

The directors are responsible for compliance with this procedure.

The director of Human Resources is responsible for the annual review and revisions.

Any exception to this procedure will require prior written approval from the agency director.

This procedure is effective as indicated.

Replaced: Operations Memorandum No. OP-110218 entitled "Employee Medical Exams/Inquiries and Records" dated November 15, 2016

Distribution: Policy and Operations Manual  
Agency Website

<u>Attachments</u>	<u>Title</u>	<u>Location</u>
<a href="#">Attachment A</a>	"FMLA Return to Work Medical Certification"	Attached
<a href="#">Attachment B</a>	"Employee Request for Reasonable Accommodation"	Attached
<a href="#">Attachment C</a>	"Request for Fitness for Duty/Medical Examination"	Attached
<a href="#">Attachment D</a>	"Order for Fitness for Duty Exam"	Attached
<a href="#">Attachment E</a>	"Fitness for Duty Exam"	Attached