



# Ethical Policies Regarding Drug Testing

Drug Testing, Confirmation Testing and Third-Party Payment

## Definitions:

**Point of care or screening test** - Often referred to as a 'test cup'. A test of urine, breath, saliva, hair or other body product samples performed onsite that typically checks for one or more classes of drug metabolites (not the drug itself). The results are not definitive until confirmed by a toxicology/confirmatory test.

**Toxicology** - A laboratory test that definitively determines the approximate amount and type of drugs present in the sample.

**Intent** - Motivation for drug screening.

**Confirmation test** - Conducting a second screening test is not a confirmation test. Instead, a medical laboratory test is used to confirm a screening test result, preferably conducted on the same sample used for the screening test. These are typically gas chromatography/mass spectrometry (GC/MS) or high performance liquid chromatography (HPLC) tests that identify the specific substance and the amount present in the sample. Confirmation tests may be the only type of test result that is admissible in a court of law.

**Third-Party payment** - A third party, most commonly an insurance company but may be anyone other than the person who received the service, pays the healthcare provider for services rendered.

**Transparency** - Full disclosure in all aspects of operation.

**Sample collection protocol** - An invariable method of preparing the drug test sample collection site, observing sample collection, and maintaining a sample chain of custody from collection to testing.

**Person-driven recovery** - A process of change through which individuals improve their health and wellness, live a self directed life, and strive to reach their full potential. (SAMHSA)

**IOP/ PHP** - Abbreviations for Intensive Outpatient or Partial Hospitalization clinical settings.

## Introduction

The intention to support recovery must always be the grounding ethical principle of any drug testing protocol. It is unethical to drug test for any other reason besides supporting recovery. High frequency of testing, applying clinical protocols in a non-clinical facility, and utilizing drug testing as a source of revenue generation might all be indicators of unethical drug testing.

Effective drug testing can be conducted in a variety of ways. However, an essential component is a consistent application of policy. Therefore, several variables should be considered when setting and implementing policy for drug testing and toxicology protocols - empowerment, accountability, and safety.

## **I. Policy Regarding Drug Testing**

### **1. *The purpose of drug testing and its frequency is to support residents' recovery.***

Drug testing is a useful tool for initiating and celebrating recovery while promoting safe, alcohol and other drug-free recovery residences. There are four primary reasons a recovery residence operator utilizes a drug testing protocol:

1. To support person-driven recovery
2. To maintain a healthy recovery culture, supportive environment and community morale
3. To foster individual and community accountability
4. To document and celebrate progress

#### **A. When to drug test**

Commonly used protocols:

- Upon entry - An initial drug screen is conducted upon entry, even following transport directly from a treatment or institutional program.
- For cause - A drug test is administered for observed unusual or risk-suggestive behavior.
- Random - Randomly select a subset of all residents for regularly scheduled testing so that each person has an equal likelihood of being selected every time.
- Designated - Every resident is tested when specified events occur, e.g, before leaving and upon return from passes, before program phase movement including transitioning out of the residence, moving into a privileged bedroom, accepting mentoring or other community leadership responsibilities, and getting prescriptions refilled (should usually be done by the prescriber).
- Self-requested - Whenever requested by the resident.

#### **B. Confirmation testing**

Confirmation testing is a valid tool, utilized when a test result is challenged. Confirming a test result using a toxicology lab can be costly. Third party payment (insurance) may be used to offset some or all of the cost. Mandates require a physician's review and sign off on the procedure when medical

necessity prompts testing. Confirmation testing is customarily used when a screening test result, positive or negative, is challenged.

Billing for confirmation testing must have medical necessity established as part of a clinical treatment protocol.

***2. Drug testing provides operators with essential information to assist residents and to enforce drug-free environment policies.***

Given a person-driven recovery philosophy, we strive to teach individuals to use testing to prevent relapse based on idiosyncratic variables instead of using it as only an externally imposed or mandated tool. Drug testing is empowering and reinforces recovery behaviors. Ideally residents engage collaboratively in a practice of accountability versus an authoritarian-based effort to “catch” a relapse.

***3. All persons administering substance-use testing should be trained in proper administration and responding effectively to test results.***

Effective administration of substance-use testing will include knowledge of the strengths and weaknesses of various forms of testing, an understanding of positive and negative results and an understanding of false positives and the conditions which may cause them. Effective training of test administrators will include an understanding of control over the testing site to avoid sample tampering. Essential to proper administration is resident-centered feedback to encourage and support ongoing recovery.

***4. Drug testing protocol is fair, uniformly implemented, and appropriate.***

Ethical drug testing is guided in clear and consistent protocols outlined in the residence operations guide or policy and procedure. Consequences of “testing positive” must be clearly stated in the resident manual or other orientation materials.

A suggested guide is as follows:

**A SUGGESTED GUIDE FOR A RECOVERY RESIDENCE'S  
POLICY STATEMENT ABOUT SUBSTANCE USE TESTING**

The philosophy behind why we do testing

Accountability

Safety

Data gathering/demonstration of progress

Will testing be random or regularly scheduled?

What kind of testing we use: urine, saliva, other

How reliable is the testing method?

Who will do the testing?

If it is urine testing,

What is the procedure for conducting the urine testing?

How do we avoid contamination?

What happens if an individual is caught substituting or adulterating specimens?

How invasive will the observation be?

Do we need a disposal policy?

What happens if the results of testing show positive?

What happens if the results are questioned as "false positives"?

What happens if an individual refuses to be tested?

How will results be recorded?

Who will have access?

Where will records be stored?

How long will the results be kept?

**5. *Dismissing a resident based on a single disputed or unconfirmed drug screening test result is unethical.***

When a test is disputed, laboratory confirmation testing is an appropriate and recommended course of action. Resident self-confirmation of drug use following a drug test is acceptable grounds for transfer from the residence.

**When a positive drug test result is contested by a resident** --particularly in a non-lab testing situation such as in a recovery-house-administered urine screen--a process must be in place for the resident to prove that the results are inaccurate.

Ideally, such verification shall take place prior to the resident being asked to vacate the residence.

Verification testing will be done, ideally, by an external lab testing service or an unbiased entity such as a hospital or other such clinical establishment.

Verification testing, if it occurs, may be at the expense of the resident. However, if verification testing is to be at the expense of the resident, a statement to this effect must be included in preliminary and orientation materials related to costs and potential costs and made known to the resident prior to the signing of a binding agreement to live at the residence.

***6. Requiring that a resident leave the residential community following a single positive drug test result without offering a safe and available alternative refuge or the opportunity to be placed with a pre-designated caregiver is unethical. Likewise, continuing the safety and support of the residential community following a positive test result is an ethical option.***

If a person is found to be under the influence of substances the safety of the residence and individual must both be taken into consideration. Recovery residences are encouraged to create self-directed recovery contingency plans in the event a recurrence occurs. A policy should be in place to protect all concerned, including the larger community (i.e. the police are notified and asked for assistance, the person is taken to a hospital; etc.).

***7. It is unethical to deliver a person incapable of self care (i.e., inebriated, suicidal, delusional, experiencing psychotic behaviors, etc.) anywhere the person will not be monitored by a responsible person.***

***8. Drug tests provided by allies (court, probation, parole, family and children's services, physicians, employer, IOP/PHP, etc.) are requested to share their results with the recovery residence in a timely manner. Duplicating testing and results is not in the interest of residents and is to be avoided.***

When a resident utilizes services in conjunction with a recovery residence, the recovery residence is encouraged to coordinate testing and sharing results when possible. Duplication of confirmation tests is to

be avoided. This is commonly referred to as double billing. It is in the best interest of residents to be in active collaboration and communicate with concurrent providers.

**9. Release of test results can only occur with the resident's consent and following applicable laws. It is unethical to release the results of a drug test without permission from the resident except as allowed by law.**

Ideally, drug testing information will be shared among recovery support and service providers ethically, utilizing appropriate confidentiality protocols.

Here is what the law says:

Federal statutes, including HIPAA, the ADA (Americans With Disabilities Act<sup>2</sup>), and other employment laws (eg, the Drug-Free Workplace Act (DFWA), the Fair Credit Reporting Act (FCRA), and U.S. Department of Transportation regulations) require companies to treat test results as confidential. Most states regard drug-testing results as confidential, as well. Drug test results may not be disclosed to third parties except as required by law or pursuant to a court order.

Source:

<https://www.jucm.com/implications-hipaa-employee-confidentiality-rules-positive-drug-test-results/>

## II. Ethical Concerns Regarding Billing to third party payers

Most ethical complaints regarding drug testing involve the billing of third party payers for confirmation testing. Common unethical (and even sometimes illegal) practices include one or more of the following:

- The owner of the recovery residence has a financial interest in the lab.
- The owner of the recovery residence receives a financial benefit (i.e. kickback, commission, etc,) for sending drug tests to a particular lab.
- The owner of the recovery residence has a financial interest in an IOP/PHP that bills for drug testing.
- The owner of the recovery residence receives a financial benefit (i.e. kickback, commission, etc,) for requiring its residents to participate in a particular IOP/PHP.
- A recovery residence offers "free" or "reduced rate" services to residents that agree to participate in a particular IOP/PHP.
- Adherence to the following ethical guidelines will minimize concerns and complaints regarding billing for drug testing.

**10. Financial costs including billing to 3rd party payers and the resident's obligations related to drug testing are disclosed to potential residents and/ their financial supporters.**

If insurance is billed financial guarantors must be informed how much they may be responsible for in deductibles, co-pays or out of pocket costs, as well as the amount the insurance will be billed.

It is unethical to withhold information that adds to the cost of a resident's stay in a recovery residence. Full disclosure of all expectations and costs related to drug testing, substance use and relapse are to be presented to all potential residents prior to their signing any binding agreement.

**11. Any RR that partners with an IOP or PHP that includes drug testing must disclose to the potential resident, all costs that may be incurred to include cost per test and frequency of testing whether or not billed to a third party.**

**12. Duplicate billing for toxicology services between the recovery residence and an IOP partner is unethical.**

**13. It is unethical to use drug testing for profit motive.**

It is not appropriate for recovery residences to use drug testing as a source for revenue generation. frequency of testing must always be based in variables pertinent to the individual ( i.e. drug of choice, detectability windows, etc.). Additionally, It is unethical to base frequency of testing on profitability.

A good litmus test for determining whether the motive is profit-based would be to ask the following: Would the drug testing protocol be the same if there were no financial remuneration for the procedure?

**14. Commissions, bonuses, rebates, kickbacks, bribes, remunerations, supplies or any thing of value, given directly or indirectly, from a drug testing company is unethical. Engagement in any fee splitting or self-referral arrangement, in any form whatsoever is an ethics violation and may be in violation of the federal Anti-Kickback Statute.**