Revised 2018 ACCESS Drug and Alcohol Policy

Summary of Revisions

*Highlights are in **BOLD:***

I. Panel Changes and New Semi-Synthetics

The revised 49 CFR Part 40 mandates that DOT regulated programs test for additional Schedule II substances including hydrocodone, hydromorphone, oxycodone, and oxymorphone. Some common names for these semi-synthetic opioids include OxyContin®, Percodan®, Percocet®, Vicodin®, Lortab®, Norco®, Dilaudid®, Exalgo®. Under Amphetamines, methylenedioxyethylamphetamine (MDEA) has been removed for confirmatory testing and methylenedioxyamphetamine (MDA) has been added as an initial test analyte.

In order for the new semi-synthetics to be properly named, **the new DOT panel and the regulations in Part 40 have been amended to change the word "opiate" to "opioid."** Opiates, such as morphine and codeine, contain or are directly derived from opium. Opioids, such as oxycodone, produce similar effects to opiates, but are not derived from opium.

II. Blind Specimens

The updates to Part 40[1] **removed the requirement for HHS certified labs to perform blind specimen testing**. Since laboratories are subject to biannual inspections and quarterly proficiency testing through the HHS National Laboratory Certification Program (NLCP), the DOT stated no concern that the proficiency levels and standards of SAMHSA certified labs will suffer. In addition, if an employee has questions about the accuracy of the positive, adulterated, or substituted test result of his or her own specimen, the employee maintains the right to request the test of his or her split specimen.

III. MRO Changes

MROs are now allowed, at their discretion, to authorize testing for THC-V in addition to D,L stereoisomers of amphetamine and methamphetamine. THC-V differential testing can distinguish whether a THC positive is due to the smoking of marijuana, a CSA Schedule I illegal drug, or is due to the use of Marinol, a CSA Schedule II prescribed pharmaceutical.

In addition, **the language of Part 40 has been updated to reflect that a prescription refers to a legally valid prescription**. By changing the language to refer to a legally valid prescription, **Part 40 reiterates their position that medical marijuana is not permitted under DOT regulations**. MROs cannot treat medical marijuana authorizations under state law as providing a legitimate medical explanation for a DOT drug test that is positive for marijuana.

The updates also clarify that an MRO should not accept a photo of a prescription label as valid proof of prescription and should instead call the pharmacy in order to ensure that a prescription is legal and valid. The updates also detail that MROs must accept a legal prescription, no matter the original date of prescription, provides clarification that MROs are not allowed to question an employee's doctor if they believe that a doctor prescribed a specific legal medication too liberally and finally makes specific changes to §40.135 to ensure that employees are informed when an MRO reports medical information to a third party[1].

IV. Fatal Flaws and Questionable Specimens[2]

Three new fatal flaws have been added to the four existing fatal flaws that cause a drug test to be cancelled:

- **There is no CCF.**
- **Two separate collections were performed using one CCF.**
- **There was no specimen submitted to the laboratory with the CCF, *but there was a specimen actually collected.***

  The additional clarification "but there was a specimen actually collected" will avoid a situation where a CCF is filled out for an original specimen, a shy bladder situation occurred, and no second specimen was collected but the CCF was still mistakenly sent to the laboratory. The updated regulations specify that the collector will discard any initial sample that is questionable (e.g. out of normal temperature range, showing signs of tampering, etc.), and the MRO will then evaluate any "shy bladder" situation if the employee was unable to provide a sufficient specimen for the direct observation recollection.

V. Clarification of Specimen Types and DNA Testing[3]

The updates reiterate that at the present time **only urine drug testing specimens are allowed for DOT regulated testing. Part 40 clearly states that drug testing of only urine specimens is allowed and that the specimens must be screened and confirmed at HHS-certified laboratories. Point of collection testing (POCT), hair testing, and oral fluid testing are not currently permitted under Part 40. Also added is a statement reiteration that DNA testing of urine specimens is not authorized and ODAPC will not give permission for such testing as this time.**

VI. DOT List-Serve[1]

MROs, Substance Abuse Professionals (SAPs), Blood Alcohol Technicians (BATs), collectors, and Screening Test Technicians (STTs) are now required to subscribe to the Office of Drugs and Alcohol Policy and Compliance (ODAPC) list-serve under the updated 49 CFR Part 40. The list-serve gives access to DOT drug and alcohol testing rules and programs, guidance for handling issues, relevant antidrug information from Federal partners, and updates concerning the program in general.

VII. Technical Updates

The DOT made technical updates to Part 40 that will be reflected as of January 1, 2018. §40.137 and §40.139 have updated section headers in order to **reflect the addition of the four new semi-synthetic opioids to the DOT panel.**

§40.139(c)(3) was rephrased. "To be the basis of a verified positive result for codeine or morphine, the clinical evidence you find must concern a drug that the laboratory found in the specimen. (For example, if the test confirmed the presence of codeine, and the employee admits to unauthorized use of hydrocodone, you must not verify the test positive for codeine. The admission must be for the substance that was found through the actual drug test.)".

§40.11(d), §40.45, §40.121, §40.203, §40.213, and §40.281 were all updated to remove obsolete compliance dates that were included from previous updates to Part 40. In addition, §40.67(n), §40.162(c), §40.159(f), §40.344(b)(4), and §40.333(a)(2) were updated to include editorial changes. Appendices B, C, D, and H were update dot add the four new semi-synthetic opioids and to remove MDEA, as well as other technical corrections such as updating web links.