



Policy Title	Tobacco Testing
Effective Date	October 3, 2019
Supersedes	Policy dated March 10, 2014
Approval	 State Personnel Director
References	State's Health Care Plans

PURPOSE

To provide a method for determining compliance with an employee's agreement to abstain from tobacco use in exchange for a reduction of the premium for the employee's chosen health care plan.

SCOPE

This policy applies to all employees who accepted the Non-Tobacco Use Agreement when enrolling for benefits under one of the state's health care plans.

POLICY STATEMENT

The state of Indiana recognizes the use of tobacco products has an adverse effect on overall personal health and associated costs of health care, and has therefore, provided an incentive in the form of a reduced premium to employees who agreed not to use tobacco products during the course of the plan year. In order to determine and maintain the integrity of the health care plan and reap the benefits of improved overall health and lower costs for the covered population, testing of an individual state employee may be appropriate either randomly or when there are reasonable grounds to suspect an employee is violating his or her agreement to abstain from using tobacco products. Such testing shall be at the state's expense.

An employee who lies about abstaining from tobacco use and has accepted the economic benefit of that deceit will be dismissed from employment for dishonesty. An employee who admits to using tobacco during the plan year prior to revoking his or her agreement to abstain need not be tested, but is subject to dismissal in the same manner as an employee whose test had a positive result. Penalties related to repayment of premiums will also apply to employees who are dismissed.

DEFINITIONS

Employee, as used in this policy, is limited to employees who entered into the Non-Tobacco Use Agreement when enrolling for benefits under one of the state's health care plans.



Non-Tobacco Use Agreement (NTUA) form recites the understanding and penalties for violating the employee's agreement not to use tobacco products during the plan year and/or refusal to submit to testing.

Reasonable suspicion shall be deemed to exist when any of the following occurs:

- Observable behaviors, such as direct observation of tobacco use or possession and/or physical manifestations of tobacco use such as lingering tobacco smell on the employee's person;
- Report that an employee is using tobacco;
- The appearance of tobacco use or possession including tins, pouches, mint leaves, and any substance that mimics a tobacco product; or
- Behavior to avoid being tested or to revoke the NTUA agreement under circumstances indicating the employee anticipated being tested.

Although reasonable suspicion does not require certainty, mere "hunches" are not sufficient to meet this standard. Any state employee who reports tobacco use without having a reasonable basis in fact may be subject to disciplinary action for false reporting.

A Safe Harbor, a.k.a. amnesty, is available to employees who revoke their NTUA by logging into PeopleSoft® prior to any use of tobacco products during the plan year. This safe harbor applies only to disciplinary action; the employee will still lose the biweekly reduction in premium and be subject to paying back any premiums for the pay periods in which the employee received the incentive.

Tobacco Use means any use of tobacco whether smoked, chewed, sniffed, or ingested in any other manner, including as an ingredient in food or drink. Only proof of use of an FDA approved Nicotine Replacement Therapy product will be accepted as evidence to rebut the presumption a positive cotinine test proves tobacco use and breach of the NTUA.

RESPONSIBILITIES

Employees are responsible for:

- honoring their commitment not to use tobacco products at all during the entire plan year covered by their signed agreement;
- revoking their NTUA prior to the use of any tobacco products by logging into PeopleSoft® so the full premium can be re-instated and back premiums collected;
- submitting to tobacco testing upon request; and
- abiding by the provisions of any penalties issued for violation of the agreement.

State Personnel Department is responsible for:

- administering the tobacco testing program.

Agency Management is responsible for:

- conducting any necessary pre-deprivation proceedings and terminating the employment an employee who violates his/her NTUA.



Indiana State
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PROCEDURES

The state of Indiana will select a sample of employees for oral fluids testing to identify the presence of nicotine in saliva. Testing dates and locations will be scheduled based upon the results of the random selection and the selected employees will be required to perform the mouth-swab collection procedure in the presence of the state's testing representative. The employee will then seal his/her sample in a tamper-proof plastic pouch and give this pouch to the state's testing representative. The representative will then send all collected samples to a designated laboratory for testing. Positive samples will then be confirmed by a second laboratory test.

The results, both positive and negative, will then be sent to the state's testing representative. Each employee whose test resulted in a confirmed positive result will be contacted. The employee will be given an opportunity to rebut the presumption that the presence of nicotine resulted from a violation of the NTUA. If the presumption is not rebutted, the employee will be required to repay premiums for the portion of the year the incentive was in place. The NTUA includes the employee's consent for the state to recover the premium difference by payroll deduction. In addition, **dishonesty will be subject to dismissal from employment.**

Employees reported by reasonable suspicion will be tested with the same testing procedures as those employees selected randomly.