

Chapter 07 - Supervision and Monitoring

Section 02 – Supervising and Monitoring the Substance-Abusing Individual

**Authority: Correctional Services Article, §§ 6-104 and 6-111,
Annotated Code of Maryland**

A. Purpose.

The purpose of this section is to identify the objectives to be achieved and the procedures to be followed by an agent or monitor in supervising or monitoring a substance-abusing individual.

B. Introduction.

Extensive research amassed by the National Institutes of Health (NIH)* points to several conclusions that an agent or monitor will recognize through professional experience: treatment works for individuals struggling with substance abuse, even when it is entered into involuntarily.

NIH also concludes that forced abstinence during incarceration is not the equivalent of treatment, and an individual who does not receive needed treatment or has no access to treatment services is likely to relapse and incur a new arrest, usually during the initial year of community supervision.

For these reasons, an agent's or monitor's timely action to connect a known substance abuser with treatment, to detect relapse, and to identify individuals who have not been previously diagnosed as substance abusers are essential skills needed in supervising active or recovering substance abusers.

C. Scope.

(1) **Problem-Solving Courts.** An individual who is ordered by a court to participate in Drug Court or other problem-solving court established by the Maryland Judiciary shall be subject to the testing procedures established by the governing problem-solving court team.

(2) **Operations Manual 07.06.** The assessment and referral provisions set forth in this section do not apply to an individual who is released to Divisional supervision from court-ordered treatment under Health General Article, §8-501, et seq., as described in Operations Manual 07.06 ("Offenders with Treatment Commitments or Certain Special Conditions").

D. Definitions.

(1) In this section, the following terms have the meanings indicated.

* <https://report.nih.gov/nihfactsheets/ViewFactSheet.aspx?csid=22>

(2) Terms defined.

(a) “Actual positive” means the conclusion that a tested specimen contains a prohibited substance or its metabolite.

(b) “Adulterated specimen” means the result of one or more methods used by an individual to avoid the detection of a substance, or its metabolite, in a specimen subject to testing.

(c) “Aftercare” means a recovery service or program available to a substance abuser following the substance abuser’s completion of inpatient or outpatient treatment. The twelve-step programs of Narcotics Anonymous, Inc. and Alcoholics Anonymous are the most widely used aftercare programs.

(d) “Behavioral positive” means that an individual who was scheduled to submit a specimen for testing did not submit the specimen because the individual:

(i) Failed to appear for the test without an explanation that is accepted by the agent or monitor and failed to make up the test within two workdays;

(ii) Refused to be tested;

(iii) Failed to produce a specimen; or

(iv) Produced an adulterated specimen.

(e) “Collector” means an agent, monitor, supervisor, or any other agency employee who is trained and authorized to collect an individual’s saliva for testing.

(f) “Controlled dangerous substance” or “CDS” means a substance that is illegal to:

(i) Dispense without a license; or

(ii) Possess or use without a prescription.

(g) “Denial” means a defense mechanism that is triggered, often subconsciously, in a substance abuser when the substance abuser is confronted with the fact and consequences of the individual’s substance abuse. Common symptoms of denial include blaming, minimizing, rationalizing, and comparing.

(h) “Enabling” means an act or omission by an individual who is concerned about a substance abuser, resulting in the elimination or softening of the harmful consequences of substance abuse to the substance abuser.

- (i) “Flushing” means to drink water frequently and excessively or to rinse one’s mouth in an effort to avoid or obscure a positive test result.
- (j) “GCMS” or Gas Chromatography Mass Spectrometry means a highly accurate laboratory analysis of bodily fluid that detects specific substances or their metabolized traces in definitive quantities.
- (k) “Positive” means:
 - (i) A specimen test result that shows the existence of alcohol, a controlled dangerous substance, or its metabolized traces at or above the established concentration levels for a specific substance; or
 - (ii) A behavioral positive.
- (l) “*Prima facie* evidence” means evidence that, on its face, is sufficient to establish a given fact and which, if not rebutted or contradicted, will remain sufficient.
- (m) “Recovery” means the process entered into by a substance abuser that results in the substance abuser’s ability to refrain from the use of alcohol or non-medically prescribed substances.
- (n) “Relapse” means the process, internal to a recovering substance abuser, that concludes with the individual’s return to substance abuse.
- (o) “Sanctions Notice” means the written notice issued to a substance abuser that contains, in part, a schedule of graduated sanctions to be imposed in consequence of non-compliant behavior.
- (p) “Substance abuser” means an individual:
 - (i) Whose release or probation order contains a special condition for substance-abuse testing or treatment;
 - (ii) Who admits to substance abuse;
 - (iii) Whose testing result is positive; or
 - (iv) Who is identified as a substance abuser by the substance abuse identification process outlined in subsection G of this policy.
- (q) “Substance abuse testing” or “Testing” means a diagnostic process that is administered for the purpose of detecting the use of alcohol or CDS. Testing includes:

- (i) A preliminary drug or alcohol screen; and, if necessary,
- (ii) Confirmatory testing.

E. Objectives. The objectives for supervising and monitoring the substance abuser are to:

(1) Identify an individual as a substance abuser through:

- (a) The substance abuse assessment process; and
- (b) Testing;

(2) Ensure that each identified substance abuser with a special condition for substance testing, assessment, and treatment is promptly referred for testing, assessment, and treatment as ordered;

(3) Determine the appropriate frequency of testing;

(4) Promptly and purposefully use graduated sanctions in order to:

- (a) Reduce recidivism;
- (b) Contribute to safer communities;
- (c) Hold a substance abuser accountable for non-compliant behavior, including relapse;
- (d) Support recovery by delivering appropriate consequences to the substance abuser for non-compliant behavior; and
- (e) Improve treatment outcomes and compliance with the conditions of community supervision.

F. Authority to Screen, Test, and Refer for Substance Abuse Assessment or Treatment.

(1) **Probation Supervision.** An agent or monitor may not require an individual to submit to substance abuse assessment, testing, or treatment unless the individual's probation order contains a special condition or conditions that authorizes the Division of Parole and Probation to do so.

(2) **Parole and Mandatory Release Supervision.** Currently, every Order for Release on Parole and Mandatory Supervision Release Certificate contains a special condition ("Special Condition 1") that authorizes the Division of Parole and Probation to direct a parolee or mandatory supervisee to submit to alcohol or substance abuse assessment, testing, and treatment.

(3) **Abstinence Special Condition.** If an individual’s probation order contains only a special condition for abstinence, an agent or monitor:

- (a) May not require the individual to submit to testing; and
- (b) Shall request that a special condition for substance abuse testing, assessment and treatment be added to the individual’s probation order by the sentencing court when the agent or monitor has a reasonable basis to believe the individual may be a substance abuser as outlined in subsection G(13) below.

(4) **Special Condition and Multiple Cases.** An agent or monitor shall request a special condition for substance abuse assessment, testing, and treatment if an individual with that special condition in one case has at least one other case which does not contain that, or a similarly worded, special condition.

(6) **Time Limitation for Requesting Added Special Conditions.** An agent or monitor shall submit the report described in paragraphs (3), and (4) of this subsection not later than 10 days after the agent learns of a circumstance set forth in paragraph (3) or (4) of this subsection.

G. Identifying the Substance Abuser.

(1) An agent or monitor shall:

- (a) Seek to identify an individual as a substance abuser at the earliest stage of supervision; and
- (b) Remain alert to the fact that an individual who is not identified as a substance abuser during the earliest stage of supervision may be a substance abuser.

(2) **Automatic Bases for Identifying a Substance Abuser.** An agent or monitor shall identify an individual as a presumptive substance abuser when:

- (a) The individual’s probation order contains a special condition for substance abuse testing, assessment, or treatment;
- (b) The individual’s criminal history record includes, within the past ten years, two or more:
 - (i) Arrests for an offense involving substance abuse; or
 - (ii) Convictions for an offense involving substance abuse; or
- (c) The individual is asked and/or admits to the use of a CDS within the past three months during the initial face-to-face contact between an agent or monitor and the individual.

NOTE: This question is a mandatory component of the initial face-to-face contact between the agent or monitor and the individual.

(3) **Special Condition Needed – Self-Admission of Supervised Individual.** If an individual under probation supervision admits to current use of CDS, an agent or monitor shall request that the individual’s probation order be amended to include drug and/or alcohol substance abuse assessment, testing and treatment.

(4) **Reasonable Basis for Identifying a Substance Abuser.** In addition to the automatic bases for identifying an individual as a presumptive substance abuser, an agent or monitor shall identify an individual as a likely substance abuser when the agent or monitor has a reasonable basis to believe that the individual is, or may be, a substance abuser.

(5) An agent’s or monitor’s reasonable basis to believe that an individual is, or may be, a substance abuser may include information obtained from any one of the following sources of information regarding an individual:

- (a) Criminal history records;
- (b) Divisional records, pre-sentence investigations and closed cases;
- (c) A local detention center;
- (d) The Division of Correction;
- (e) A pretrial supervision unit;
- (f) A law enforcement unit;
- (g) Agent observations;
- (h) An official report of overdose occurrences;
- (i) Collateral sources; and
- (j) Risk/Needs assessment instrument.

(6) **Agent Observations.** At each positive contact, an agent or monitor shall observe the individual for signs of substance abuse, consistent with the agent’s and monitor’s training and experience in recognizing the signs of substance abuse.

(7) **Collateral Sources of Information.** At each collateral contact with an individual’s family, friend, or employer, an agent or monitor shall be alert to any mention, by the collateral source, of the individual’s having a past or current drug or substance abuse problem.

(8) Indicators That an Individual Is a Substance Abuser. Indicators or symptoms of substance abuse may be found in an individual's:

- (a) Substance abuse history;
- (b) Psychological history;
- (c) Social history; and
- (d) Physical history.

(9) Substance-Abuse and Treatment History. To capture an individual's substance abuse and treatment history, an agent or monitor shall consider:

- (a) At what age the individual:
 - (i) First used CDS;
 - (ii) First used alcohol; and
 - (iii) Began regular use of CDS or alcohol;
- (b) What type or types of CDS the individual has used;
- (c) By what method the individual has used each type of CDS;
- (d) How frequently and in what amount the individual has used each type of CDS;
- (e) How much money the CDS has cost the individual to date;
- (f) How the individual acquired the money to pay for the CDS;
- (g) Whether the individual usually used CDS alone or with others;
- (h) Whether the individual has ever been hospitalized for a reason related to CDS or alcohol use, including overdose and withdrawal;
- (i) The date of the individual's most recent use of CDS or alcohol;
- (j) The longest period that the individual has gone without using CDS or alcohol;
- (k) Whether the individual has ever attended treatment for substance abuse; and

(l) Whether the individual has ever attended a meeting of Narcotics Anonymous or Alcoholics Anonymous.

(10) **Social History of the Substance Abuser.** To capture an individual's social history, an agent or monitor shall consider the following factors:

- (a) Family disruption, including physical, sexual or emotional abuse;
- (b) Inability to maintain employment;
- (c) Decreased standard of living due to the diversion of income to substance abuse;
- (d) Damaged personal relationships; and
- (e) Legal problems due to substance abuse.

(11) **Psychological History of the Substance Abuser.** To capture an individual's psychological history, an agent or monitor shall consider the following factors:

- (a) Loss of ability to cope with stress;
- (b) Drug-induced psychotic symptoms; and
- (c) Depression.

(12) **Physical History of the Substance Abuser.** To capture an individual's physical history, an agent or monitor shall consider the following factors:

- (a) Illness, including:
 - (i) AIDS;
 - (ii) Hepatitis; and
 - (iii) A sexually transmitted disease;
- (b) Physical damage, including a heart attack, stroke, and liver damage;
- (c) Injuries from drug-induced behavior;
- (d) Physical dependence;
- (e) Impotence; and

(f) Fresh needle marks.

(13) **Special Condition Required.** If an agent or monitor has a reasonable basis to believe that an individual may be a substance abuser, and the individual's probation order does not contain a special condition for substance abuse testing, assessment, and/or treatment, the agent or monitor shall:

(a) Record, in OCMS Case Notes, the detailed factor or factors identified in this subsection that formed the agent's or monitor's reasonable basis to believe the individual is a substance abuser; and

(b) Discuss with the agent's or monitor's supervisor whether substance abuse testing, assessment, and/or treatment is warranted based upon the factors identified by the agent or monitor.

(14) If the agent's or monitor's supervisor agrees that substance abuse testing, assessment, and/or treatment is warranted, then the supervisor shall:

(a) Record in OCMS Case Notes the supervisor's agreement with the agent's or monitor's conclusion that an individual is a substance abuser; and

(b) Direct the agent or monitor to complete a Request to Modify Conditions report that requests the sentencing court to add a special condition for substance abuse testing, assessment, and treatment to the individual's probation order.

(15) An agent or monitor shall complete the Request to Modify Conditions report required under paragraph (14)(b) above not later than ten (10) workdays after the supervisor issued the instruction and/or approval to complete the report.

(16) If the supervisor disagrees with the agent's or monitor's conclusion regarding an assessment referral, the supervisor's determination shall control and the supervisor shall record in OCMS Case Notes the reason why the supervisor disagrees.

H. Referral for Assessment.

(1) An agent or monitor shall refer an individual for a substance abuse assessment when:

(a) As a result of the identification process set forth in subsection G above, the agent or monitor has a reasonable basis to believe that the individual may be a substance abuser and the individual agrees to be assessed;

(b) The individual's probation order contains a special condition for drug, alcohol, or substance-abuse evaluation, testing, and treatment; or

(c) The individual is on parole or mandatory release supervision and

(i) Is released from incarceration with a recommendation for substance-abuse treatment;

(ii) Incurs an actual or behavior positive while under community supervision; or

(iii) Admits to current substance abuse.

(2) An agent's or monitor's reasonable basis to believe that an individual may be a substance abuser may be based on one or more of the factors identified in subsection G.

(3) **Time limitations for referral.** An agent or monitor shall refer an individual for an assessment not later than ten (10) workdays after receiving notice that the:

(a) Supervision of an individual has been assigned to the agent or monitor; and

(b) Individual's release or supervision order contains a special condition for drug, alcohol, or substance abuse evaluation, testing, and treatment.

I. Screening and Testing – Vendor Products and Software.

(1) **Vendor.** The Department is currently under contract with Redwood Toxicology Laboratory ("Redwood") for products and software related to drug screening and testing and, unless otherwise authorized, an employee shall use only vendor-furnished products and software.

(2) **Screening and testing explained.** Substance abuse testing refers to a process that includes:

(a) An initial drug or alcohol screen that identifies a presumptively positive or negative specimen; and

(b) If necessary, confirmatory testing of a presumptively positive screen result.

(3) **Training material.** A complete series of training material for administering drug screening and testing, as well as using the vendor's software, is available through the following webpage from Redwood: <https://redwoodtoxicology.com/devices>

(4) **Authorized collector.** An employee shall be familiar with specimen collection procedures and specimen testing to ensure the integrity of the specimen collected and the reliability of the screening and/or testing results.

(5) **Screening and testing tools.** The agency uses several vendor-furnished tools for specimen collection, screening, and testing. These include:

- (a) The T-Cube™ oral saliva rapid drug screen;
- (b) The Reditest® oral saliva rapid alcohol screen; and
- (c) The Quantisal® oral saliva swab for drug and alcohol confirmatory testing.

(6) **Vendor testing software.** Redwood employs its own web-based specimen collection and management information system known as ToxAccess® to enable authorized DPP collectors to:

- (a) Record the results of rapid screening test;
- (b) Document proper chain of custody procedures for rapid drug screens and confirmatory tests; and
- (c) View the results of confirmatory tests conducted by Redwood.

J. Initial Screen and Case Planning.

(1) **Special condition for testing.** An agent or monitor shall require an individual to submit to substance abuse testing if the individual is:

- (a) On parole or mandatory supervision; or
- (b) On probation supervision and the individual's probation order contains a special condition that explicitly authorizes or permits testing.

(2) **Initial test.** The initial test shall be performed:

- (a) At Intake; or
- (b) By the agent or monitor of record regardless of supervision level not later than 30 days after the date of Intake.

(3) An agent or monitor shall incorporate the results of an individual's initial test when developing the individual's case plan.

K. Documenting Screen/Test Results; Admission of Use Form.

(1) An employee who administers a rapid screen to an individual under supervision or monitoring shall:

- (a) Advise the individual of the result of the screen upon the conclusion of the screen;
 - (b) For a positive screen result, ask the individual whether he or she recently used prohibited drugs or alcohol; and
 - (c) Enter the result of the screen into:
 - (i) ToxAccess®, immediately following the conclusion of the screen or test; and
 - (ii) OCMS, not later than one work day following the conclusion of the screen or test.
- (2) If an individual admits to the illegal or prohibited use of drugs or alcohol during the rapid screening process, an agent or monitor shall:
- (a) Document the admission in OCMS Case Notes;
 - (b) Complete Form DPP-SUP-72 (“Admission of Substance Use”);
 - (c) Review the contents of Form DPP-SUP-72 (“Admission of Substance Use”) with the individual;
 - (d) Have the individual sign and date the form;
 - (e) Provide the individual with a copy of the form; and
 - (f) Title and upload the form into the Documents section of OCMS and maintain the original in the case file.

L. Testing Frequencies/Matrix.

(1) **Adjustments to testing frequency.** Notwithstanding any other provision of this section, drug testing is dependent upon finite resources and other factors that may, from time to time, affect the ability of an agent to adhere to a prescribed testing frequency. When such a situation arises, a statewide or region-specific notice shall be issued by the Director or the Director’s designee. The notice shall include adjustments to the testing frequency as well as the duration of the adjustments, if known.

(2) **Testing Matrix and Color Key.** Attached to this section as Appendix A is a Testing Matrix (hereinafter, matrix) that an agent or monitor shall use to determine testing frequencies. The matrix is color-coded and corresponds to the vendor’s software color codes. Except as set forth in paragraph (4) of this subsection, an agent or monitor shall use the matrix by selecting the individual’s supervision level and relevant special condition authorizing testing. The box at which the selected two variables intersect provides the individual’s testing color. Immediately

below the matrix is the color key, which provides the resultant testing frequency, as described below.

(3) **Document test results.** The result of each test administered to an individual shall be entered by the individual's agent or monitor into:

- (a) OCMS Case Notes; and
- (b) The vendor's software program.

(4) **Random testing mandated.** With the exception of for-cause testing described in subsection M below, all testing is random testing and a fixed or static testing regimen is prohibited. A fixed or static testing regimen eliminates unpredictability and increases the possibility that the individual will anticipate a test and attempt to manipulate the result.

(5) **Orange.** For an individual whose matrix result is orange, an agent or monitor shall randomly test the individual a minimum of once and a maximum of twice monthly for two consecutive months. If the individual tests negative for all tests administered, the agent or monitor shall step-down the individual to Yellow in the vendor's software program. Conversely, if an individual incurs an actual positive during the two months of random testing, an agent or monitor shall:

- (a) Step-up the individual to Red in the vendor's software program; and
- (b) Increase testing to a minimum of two or a maximum of three tests per month for the next two consecutive months.

(6) **Yellow.** For an individual whose matrix result is Yellow, an agent or monitor shall administer tests to the individual a minimum of once a month.

(7) An agent shall step-up an individual from Yellow to Orange if the individual:

- (a) Tests positive; or
- (b) Is noncompliant with a court-ordered substance-abuse evaluation or evaluation recommendation.

(8) An individual who satisfies the condition set forth in (7)(a) or (b) shall be tested once or twice monthly for two consecutive months.

(9) **Green.** An agent shall move an individual's code to Green in the vendor's software program and discontinue testing except for cause as described in subsection M below when the agent or monitor confirms that the individual is enrolled in a treatment program. For purposes

of discontinuing testing, participation in Narcotics Anonymous, Alcoholics Anonymous, or any other self-help program does not satisfy the treatment program prerequisite.

(10) **Green.** Except as set forth in paragraphs (11) and (12) below, if an individual is enrolled in a certified substance abuse treatment program when the individual's supervision term begins, an agent or monitor shall:

- (a) Enter the individual in category Green in the vendor's software program; and
- (b) Not later than 30 days following the agent's or monitor's initial positive contact with the individual, confirm that the individual is enrolled in treatment.

(11) If an individual is unsuccessfully terminated from treatment, an agent or monitor shall:

- (a) Impose an appropriate JRA sanction or intervention using the "Supervision Intervention(s)/Sanction(s)" module of OCMS;
- (b) Test the individual in accordance with the testing matrix; and
- (c) Re-refer the individual for treatment.

(12) If an agent or monitor has a basis to conduct *for cause* testing, as explained in subsection M, the agent or monitor shall step-up the individual's code to:

- (a) Orange if the individual was in the Yellow testing category; and
- (b) Red if the individual was in the Orange testing category.

M. For-Cause Testing.

(1) An agent or monitor shall require an individual to submit to testing *for cause* when the:

- (a) Individual's release or probation order contains testing authorization; and
- (b) Agent or monitor has a reasonable basis to believe that the individual may be using a prohibited substance, which may include alcohol or other substances.

(2) A reasonable basis to believe that an individual may be using a prohibited substance includes:

- (a) The individual's possession or alleged possession of CDS or CDS paraphernalia;
- (b) Information received from a reliable source that the individual is using CDS;

(c) Agent or monitor observations of the individual, consistent with the agent’s training and experience in recognizing the signs of substance use; or

(d) An individual’s admission that the individual is using or recently used a prohibited substance.

Note: For an individual who is prohibited from using alcohol, alcohol is among the prohibited substances as that term is used in M(1) and (2).

N. Marijuana/Cannabis (THC) Positives.

(1) If an individual tests positive for THC, an agent or monitor shall determine whether the individual is a qualifying patient who, under Maryland law, is permitted to possess and to use cannabis.

(2) If an agent or monitor determines, pursuant to paragraph (3) of this subsection, that the individual who tests positive for THC is legally permitted to use cannabis, the agent or monitor:

(a) May not initiate any legal or administrative sanction against the individual based on the positive result for THC;

(b) Shall enter a Case Note to record into OCMS that the individual is a qualifying patient who may use cannabis legally and to detail the proof of that conclusion; and

(c) Shall notify the sentencing court and/or Maryland Parole Commission that the individual is legally permitted to use cannabis in accordance with paragraph (3) below.

(3) **Medical use of cannabis.** In order to use cannabis for prescribed medicinal purposes, an individual must possess both a:

(a) Valid patient identification card issued by the Natalie M. LaPrade Medical Cannabis Commission (see COMAR 10.62.06.01 [Patient Identification Cards](#)); and

(b) Current certification for the purchase of cannabis (see COMAR 10.62.05.01 [Written Certification](#)).

Note: A hospice care patient is exempted from the patient identification card requirement.

(4) If an agent or monitor determines that an individual whose test is positive for THC is not permitted to use marijuana as provided in paragraph N(3) above, the agent or monitor shall impose an appropriate graduated intervention or sanction in accordance with *Operations Manual* 07.13.

O. Missed Collection: Make Up.

(1) An individual who fails to appear for a specimen collection shall be permitted to make up the missed collection if the:

(a) Individual's explanation for missing the scheduled collection is reasonable and accepted by the agent; and

(b) Individual provides a specimen not later than two workdays following the missed collection.

(2) An agent or monitor may not record a behavioral positive for a missed collection if the individual makes up the missed collection.

(3) If an individual who is scheduled for a make-up collection fails to submit the specimen, the agent or monitor shall:

(a) Record both the originally scheduled collection and the make-up collection as behavioral positives; and

(b) Impose an appropriate graduated sanction or intervention in accordance with *Operations Manual 07.13*.

(4) An agent or monitor may not permit an individual to make up a collection for which the individual appeared.

Example 1: An individual appears for collection but leaves before submitting a specimen or attempts to dilute, to contaminate, or to substitute a specimen. The agent shall impose an appropriate graduated sanction or intervention in accordance with *Operations Manual 07.13*.

Example 2: An individual asserts that a positive specimen was a testing error and insists on submitting another specimen as proof of the mistake. The agent shall impose an appropriate graduated sanction or intervention in accordance with *Operations Manual 07.13*.

P. Substance-Abuse Treatment.

(1) **Voluntary enrollment.** An individual voluntarily enrolls in a certified treatment program when the enrollment is not pursuant to a special condition of the individual's release or probation order.

(2) An agent or monitor who learns of an individual's voluntary enrollment in treatment shall, not later than ten (10) workdays following the agent's or monitor's learning of the enrollment:

(a) Inform the individual that a special condition to mandate continued treatment will be requested; and

(b) Submit a request to the sentencing court to add to the individual's supervision order a special condition for substance-abuse treatment.

(3) **Twelve-step program excluded.** An agent or monitor may not request the addition of a special condition for substance-abuse treatment to an individual's supervision order if the only basis for the request is the individual's voluntary participation in a self-help program, such as Alcoholics Anonymous or Narcotics Anonymous.

(4) When an individual who is subject to a special condition to attend substance-abuse treatment is found to have unilaterally enrolled in a substance-abuse treatment program, the agent or monitor shall determine whether the program in which the individual enrolled is a certified treatment provider.

(5) An agent or monitor shall direct an individual to enroll in a certified substance abuse treatment program if the individual:

(a) Is enrolled in a non-certified substance abuse treatment program; and

(b) Has a special condition to attend substance abuse treatment.

(6) **Mandatory enrollment.** An individual's enrollment in a substance-abuse treatment program is mandatory when the enrollment is pursuant to a special condition to attend substance abuse treatment.

(7) If a particular in-state treatment program is named on an individual's supervision order, an agent or monitor shall inform the individual that the individual's enrollment or continued participation in the particular program:

(a) Is specified by order of the court or Parole Commission; and

(b) May not be changed without a superseding order of the court or Parole Commission.

(8) **Prompt enrollment in treatment required.** An agent or monitor shall ensure that an individual who is mandated to attend substance-abuse treatment enrolls in treatment:

(a) Without avoidable delay; and

(b) Promptly after the mandate is imposed by a court or the Parole Commission, as applicable.

(9) **Release of information.** For each individual who is mandated to attend substance-abuse treatment, an agent or monitor shall complete and have the individual sign and date a DPP-ADM-75 (“Consent and Authorization for Release of Information”), which can be accessed through the following link: <https://intranet.dpscs.mdstate/agencies/dpp/forms/admin/>

(10) A release of information shall include the:

(a) Name and business address of the:

- (i) Agent or monitor who is authorized to receive treatment information; and
- (ii) Treatment program or provider who is to furnish the treatment information;

(b) Dates the release of information begins and ends; and

(c) Specific information, such as attendance and progress reports, which is to be released by the treatment program or provider.

(11) **Re-release of information.** An agent or monitor may release substance abuse treatment information to:

(a) The sentencing court;

(b) The State’s Attorney assigned to handle any collateral proceedings related to the underlying offense for which substance abuse treatment was ordered;

(c) The supervised or monitored individual who is the subject of the treatment special condition; and

(d) The supervised or monitored individual’s attorney.

(12) An agent may not re-release information unless the release is authorized in writing by the individual, except as provided in paragraph (11) above.

(13) **Out-of-state treatment.** If a court or release order appears to require an individual to attend an out-of-state treatment program, the agent or monitor shall promptly:

(a) Inform the immediate supervisor of the court’s requirement; and

(b) Using Chapter 09 of this manual

https://intranet.dpscs.mdstate/agencies/dpp/policy/operations_manual/:

- (i) Determine whether the individual is subject to the Interstate Compact for Adult Offender Supervision; and

- (ii) If the individual is subject to the supervision transfer requirements of the Interstate Compact for Adult Offender Supervision, follow the applicable procedures set forth in that chapter.

(14) If the individual is not eligible for supervision transfer under the Interstate Compact for Adult Offender Supervision, the agent or monitor shall:

- (a) Document in OCMS Case Notes whether the individual has the agent’s or monitor’s permission to attend the out-of-state program;
- (b) Complete, review, and have the individual sign DPP-ADM-75 (“Consent and Authorization for Release of Information”) for the out-of-state treatment program;
- (c) Monitor the individual’s compliance with the treatment special condition; and
- (d) Promptly notify the sentencing court or Maryland Parole Commission if the individual is discharged from or does not successfully complete the program.

(15) **Changing treatment programs.** An agent or monitor shall:

- (a) Discourage an individual from changing substance-abuse treatment programs; and
- (b) If an individual indicates a desire to change treatment programs, ask the individual to state the reason for the desired change.

(16) Depending upon the reason given by the individual, the agent or monitor shall:

- (a) Discuss the issue with the individual’s treatment counselor;
- (b) Consult with the agent’s or monitor’s immediate supervisor;
- (c) If the agent’s or monitor’s immediate supervisor agrees, schedule a meeting with the individual and supervisor;
- (d) Submit a report to the court or the Parole Commission, if a change in treatment provider would conflict with a special condition for the individual to attend a specified treatment program; or
- (e) Employ, as appropriate, any combination of items (a) through (d).

(17) **Aftercare.** An agent or monitor shall regard aftercare as an element of an individual’s treatment for substance abuse if:

- (a) The individual is subject to mandatory treatment for substance abuse; and

(b) A treatment provider recommends that the individual attend aftercare.

Q. Evidencing Individual Non-Compliance at a Violation Hearing.

(1) This subsection is limited to a probation or release order violation that arises from an individual's non-compliance with a condition to:

- (a) Attend treatment for substance abuse; or
- (b) Abstain from using CDS or alcohol.

Note: With respect to (Q)(1)(b), please see paragraph (Q)(5) and the Note which immediately follows it below.

(2) If all of the following conditions are met, a report of a confirmatory laboratory test is *prima facie* evidence of the results of the laboratory test:

- (a) The laboratory that conducts the test is:
 - (i) Certified by the Maryland Department of Health; and
 - (ii) Approved by the Division; and
- (b) The laboratory report of the test contains the information set forth in paragraph (3) of this subsection.

(3) A laboratory test report shall:

- (a) Identify the chemist or analyst who performed the test as an individual qualified under standards approved by the Maryland Department of Health to perform the test;
- (b) Be signed by the chemist or analyst who performed the test;
- (c) Contain a declaration that the:
 - (i) Specimen was properly tested under procedures and equipment approved by the Department of Health;
 - (ii) Procedures of the test are reliable; and
 - (iii) Test indicates that the individual used a CDS or alcohol; and
- (d) Be sent to the individual or the individual's legal representative, as set forth in paragraph (4) of this subsection.

(4) **Notice requirement.** At least ten (10) calendar days prior to the date that a laboratory test result and declaration will be introduced as evidence at a violation hearing, the agent or monitor shall provide a copy of the test report and declaration described in paragraph (3) to the:

- (a) Individual , if the individual is not represented by legal counsel; and
- (b) The individual’s legal counsel, if the individual is represented by legal counsel.

(5) **Use of certain information prohibited.** If an agent learns from *any* source that a supervised individual received medical treatment for ingesting drugs or alcohol, the agent may not:

- (a) Initiate a violation proceeding based solely upon that information; or
- (b) Use that information in support of a charge that the supervised individual violated a condition of probation or release.

Note: With respect to paragraph (5) of this subsection, the overarching objective of the State’s policy, as reflected in § 1-210(d) of the Criminal Procedure Article of the Annotated Code of Maryland and Executive Order 01.01.2017.02 is not to punish the substance-abusing individual but to assist the individual in attaining a sober and drug-free life.

(6) **Admission of substance use.** If an individual’s admission to using a substance or alcohol for which the individual screened positive results in the initiation of a violation proceeding, the agent or monitor shall provide the court and/or Parole Commission with:

- (a) The original DPP-SUP-72 (“Admission of Substance Use”) that was completed to document the admission and which bears the supervised or monitored individual’s signature; and
- (b) The record of graduated sanctions or interventions that were imposed prior to the initiation of the violation proceeding.

R. Positive Reinforcement as Reward.

(1) An agent’s or monitor’s use of positive reinforcement to encourage and to reward an individual’s compliant behavior is the essential complement to an agent’s using sanctions, or negative reinforcement, in response to the individual’s noncompliant behavior.

(2) An agent or monitor shall use positive reinforcement to encourage and reward an individual whose behavior merits positive reinforcement. Such behavior includes an individual’s:

- (a) Participating in treatment or aftercare;
 - (b) Attending twelve-step meetings;
 - (c) Seeking employment or taking job training;
 - (d) Not using drugs;
 - (e) Meeting the terms and conditions of the individual’s probation or release order; and
 - (f) Reporting as directed:
 - (i) For testing; and
 - (ii) To the individual’s agent or monitor.
- (3) **Positive reinforcers.** Positive reinforcers include an agent’s or monitor’s:
- (a) Warmly greeting an individual;
 - (b) Looking directly at an individual when speaking with the individual;
 - (c) Congratulating an individual who obtains a job or re-enters school;
 - (d) Letting an individual know that the individual’s progress is apparent;
 - (e) Speaking to an individual in a tone and in a manner one would use with an acquaintance; and
 - (f) Extending a deserved compliment to an individual.

APRENDIX A FOLLOWS ON THE NEXT PAGE

Appendix A

**GENERAL SUPERVISION DRUG TESTING
MATRIX SCHEDULE AND REQUIREMENTS**

LEVEL	HIGH	MODERATE	LOW-MODERATE	LOW
	HIGH/VPI/REVIEW	MOD	LMD	LOW
Mandatory / Parole Release or Probation with Special Condition for DAST	ORANGE	YELLOW	YELLOW	YELLOW
Probation Supervision W/Special Condition or Assessment for Random Testing Only	ORANGE	YELLOW	YELLOW	YELLOW
Step-Up Option	RED	ORANGE	ORANGE	ORANGE
Approved Substance Abuse Program Placement	GREEN	YELLOW	YELLOW	GREEN
Test Results Verification	Weekly	As needed	As needed	As needed

FREQUENCY KEY

RED	ORANGE	YELLOW	GREEN
Random 3 tests per month	Random 2 tests per month	Random 1 test per month	Random testing, For Cause testing

Administrative History

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