



Virginia Department of Corrections

Human Resources

Operating Procedure 102.7

Employee Records

Authority:

Directive 102, *Talent Acquisition and Records*

Effective Date: December 1, 2024

Amended:

Supersedes:

Operating Procedure 102.7, October 1, 2021

Access: ☐ Restricted ☒ Public ☐
Inmate

ACA/PREA Standards:

5-ACI-1B-16, 5-ACI-1C-20, 5-ACI-1C-21.
4-ACRS-7D-27, 4-ACRS-7E-11, 4-ACRS-7E-12;
4-APPFS-3E-12, 4-APPFS-3E-13; 2-CO-1C-23,
2-CO-1F-06; 1-CTA-1C-11; §115.17, §115.217

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REVIEW

The Content Owner will review this operating procedure annually and re-write it no later than three years after the effective date.

COMPLIANCE

This operating procedure applies to all units operated by the Virginia Department of Corrections (DOC). Practices and procedures must comply with applicable State and Federal laws and regulations, American Correctional Association (ACA) standards, Prison Rape Elimination Act (PREA) standards, and DOC directives and operating procedures.

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DEFINITIONS

ADA Committee - The Department of Corrections *Americans with Disabilities Act (ADA)* Committee chaired by the DOC Benefits Manager in the Office of Human Resources that is responsible for reviewing employee requests for reasonable accommodations that exceed or are expected to exceed 90 calendar days. Committee members may include Human Resources Managers and other individuals who have technical knowledge of the Act, as selected by the Director of Human Resources.

Cardinal - The official accounting system for the Commonwealth; Cardinal is the primary point of entry and approval for all agency account transactions. All agency-based systems and records are considered to be subsidiary to Cardinal.

Disability - An actual impairment that substantially limits one or more of the major activities of daily living (ADL) of an individual; or a record of such impairment; or being regarded as having such an impairment.

Employee Medical Record - The employee medical record maintained by the Human Resources office that supports the organizational unit where the employee works.

Form I-9, Employment Eligibility Verification (I-9) – Use the Form I-9 to verify the identity and employment authorization of individuals hired for employment in the United States. All U.S. employers must properly complete Form I-9 for every individual they hire for employment in the United States. This includes citizens and noncitizens.

Health Care Provider - An individual whose primary duty is to provide health services in keeping with their respective levels of licensure, health care training, or experience.

Medical Information - Any document that contains information regarding the physical or mental health, disability, or impairment of an employee; this includes formal documentation, transcribed notes, and documentation provided by the employee from a health care provider.

Organizational Unit - A DOC unit, such as a correctional facility, Regional Office, Probation and Parole Office, Virginia Correctional Enterprises, Academy for Staff Development, Infrastructure and Environmental Management Unit, Agribusiness Unit, and individual Headquarters units, e.g., Human Resources, Offender Management, Internal Audit.

Organizational Unit Head - The person occupying the highest position in a DOC organizational unit, such as a correctional facility, Regional Office, Probation and Parole Office, Virginia Correctional Enterprises, Academy for Staff Development, Infrastructure and Environmental Management Unit, Agribusiness Unit, and individual Headquarters units, e.g., Human Resources, Offender Management, Internal Audit.

Personal Information - All information that describes, locates, or indexes anything about an individual including their real or personal property holdings derived from tax returns, and their education, financial transactions, medical history, ancestry, religion, political ideology, criminal or employment records, or that affords a basis for inferring personal characteristics, such as finger and voice prints, photographs, or things done by or to such an individual; and the record of their presence, registration, or membership in an organization or activity, or admission to an institution. The term does not include routine information maintained for the purpose of internal office administration, nor does the term include real estate assessment information.

Personnel File - The "official" or master personnel file that includes documents with original or electronic authorization signatures relating to an individual's employment with the Commonwealth. In addition to physical documents stored at an Agency, the personnel file also consists of multiple systems including but not limited to human resources information system, applicant tracking system, performance management system, time tracking system, payroll system or any other electronic system.

Personnel Records - All records maintained on employees, pertains to all employee records.

Third Party - An individual other than the subject of the records, including other state agencies, who request information from the records maintained by state agencies.



PURPOSE

This Operating Procedure provides guidance for comprehensive and accurate personnel and medical records management for each Department of Corrections (DOC) employee. The DOC will ensure the adequacy of data to produce accurate personnel transactions and required federal, state, and management reports; and to ensure compliance with the Code of Virginia. This Operating Procedure provides instruction on the maintenance and utilization of DOC employee medical information, outlining areas of responsibility for ensuring confidentiality of medical information.

PROCEDURE

I. Personnel Records - Records to Be Maintained

- A. The Director of Human Resources, acting for the Director, will establish a system of uniform personnel records and reports which must conform to the requirements of the Department of Human Resource Management (DHRM); see DHRM Policies 6.05, *Personnel Records Disclosure*, and 6.10, *Personnel Records Management*, and any other applicable laws and regulations. (5-ACI-1B-16, 5-ACI-1C-20; 4-ACRS-7D-27, 4-ACRS-7E-11; 4-APPFS-3E-12; 2-CO-1C-23; 1-CTA-1C-11)
- B. The head of each organizational unit is responsible for ensuring that personnel records and reports for the unit are prepared and maintained by the unit in accordance with instructions from the Director of Human Resources.
- C. As delegated by the Director of Human Resources, major institutions and Virginia Correctional Enterprises will maintain the personnel records for their employees, including, but not limited to the personnel file, Form I-9, *Employment Eligibility Verification*, and medical records. Personnel records for Field Unit employees will be maintained at the appropriate major institution. The Office of Human Resources at Headquarters will maintain the personnel records for all other employees, including all Wardens, Superintendents, Human Resource Officers, and employees in Community Corrections.

II. Personnel Files

- A. Records to be included in the official personnel file include, but are not limited to:
 - 1. Applications
 - 2. Offer letters
 - 3. Probationary progress review forms
 - 4. Performance evaluation forms, reference letters, orientation checklist
 - 5. Health insurance enrollment forms
 - 6. Letters of commendation
 - 7. All DOC-3s and other payroll transaction forms such as *Determining Rate of Pay* (DROP) forms
- B. The DOC is required to maintain current personal data information. Within 30 days of a change, employees must update the following information either through Cardinal or an updated *Employee Personal Data Sheet 102_F25* submitted to their local Human Resources office:
 - 1. Name
 - 2. Address
 - 3. Email address
 - 4. Home or cell phone number
 - 5. Emergency contact information
- C. Medical and mental health records, including medical certifications, and physical examinations, must be



kept in a separate medical record maintained by Human Resources and access should be strictly controlled. The subject of these records has access to them unless the health care provider has requested the records not be shared with the subject. (5-ACI-1C-20, 4-ACRS-7E-11, 4-APPFS-3E-12, 2-CO-1C-23, 2-CO-1F-06, 1-CTA-1C-11)

D. The I-9 *Employment Eligibility Verification* forms (Form I-9) must be kept in a separate file by Human Resources.

III. Other Separate Personnel Records

A. Records on the following subjects must be filed in secure files apart from the regular personnel file:

1. Equal Employment Opportunity
2. Recruitment and Selection
3. Exit Interviews
4. Grievances
5. Investigations
6. Form I-9
7. Medical and Mental Health Records
8. Driving Records
9. Litigation

B. Supervisors may maintain confidential employment-related fact files on each of their employees. Employee medical information must not be placed in the supervisor's file.

1. Employee's must be given access to any information maintained in their supervisor's files that pertain to them unless such information is protected by law.
2. The supervisor's file may include, but is not limited to, the following:
 - a. Documentation regarding employee's work performance or performance evaluation.
 - b. Documentation of counseling sessions with employees on such things as performance or behavior problems or DOC policies and procedures.
 - c. Interim performance evaluations.
 - d. Copies of annual evaluations.
 - e. Copies of Written Notices.
 - f. Letters or memoranda from other sources regarding employees' job performance such as letters of commendation or complaint.
 - g. Attendance records.
 - h. Copies of training certificates and/or other training records.
 - i. Copies of Employee Work Profiles (EWP's).
 - j. Acknowledgment of Extraordinary Contribution and Needs Improvement/Substandard Performance.

C. Operating Procedure 323.1, *Vehicle Acquisition, Operation, and Maintenance*, requires the Organizational Unit Head to maintain a confidential file containing a copy of each employee's current driver's license.

1. Driver's license checks will be conducted annually for each employee whose position requires them to have a valid driver's license or who may drive either their personal vehicle or a state vehicle in the performance of their duties, to attend training, or for other reasons related to their employment.
 - a. New employees will be required to sign *Authorization for On-going License/Background Checks*



102_F8 during initial orientation. A signed *Authorization* is required of existing employees who do not have one on file.

- b. Organizational units will establish a process to review each employee's DMV record annually.
 - c. For employees who have drivers' licenses issued by Virginia, unit HR staff should conduct the annual driver's license check through the Department of Motor Vehicles record database.
 - d. Employees who are licensed to drive from states other than Virginia must secure a copy of their driving records to provide to the designated unit authority, generally the Human Resource Officer or designee.
 - i. Requests for reimbursement to employees for cost of driving record reports will be submitted as non-travel related expenses via Part B of the *Employee Expense Reimbursement* 240_F6; see Operating Procedure 240.1, *Travel*.
 - ii. Attach the original receipt to an original, signed and dated Part B of the *Employee Expense Reimbursement* and forward to the unit business office.
2. Unreported violations found during driver's license record checks will be considered as failure to comply with reporting notifications as required by Operating Procedure 040.1, *Litigation*.

IV. Transfer of Personnel Files

A. Inter-Agency Transfers - When an employee transfers from the DOC to a position in another executive branch state agency, the employee's official personnel file, containing documents listed below, must also be transferred to the new employing agency no more than 15 days after the effective date of the transfer. At a minimum, transfer files should contain:

1. Commonwealth of Virginia - Original Application(s) for Employment with original signature(s)
2. All original DOC-3s, internal HR documents generated from an HR database used to document payroll transactions, signed by the proper authority.
 - a. Copies of DOC-3s for transactions affecting salary changes effective the two years prior to employee transfer must be retained in the agency for audit purposes. These copies should be maintained until an audit occurs or five years from the date of transfer, whichever is longer.
 - b. If the original documentation is needed for an emergency audit, auditors can be directed to the employee's last known place of state employment or DHRM.
3. Original performance evaluations.
4. Original written notices.
5. Authorization letters for exceptional salary actions.
6. Interim performance evaluations for employees who are laterally transferring.
7. Other documents from the personnel file that may benefit the receiving agency.

B. Intra-Departmental Transfers

1. When an employee transfers from one organizational unit to another organizational unit within the DOC, their personnel file and their Form I-9 should be transferred as well.
2. The Form I-9 should be forwarded to the receiving organizational unit.
3. No employee will deliver their own personnel file. The file must be sealed and sent by certified mail or approved messenger services.

C. Transfers outside of Executive Branch

1. Records for employees transferring to positions outside the executive branch will be retained by the DOC as if the employee were separating from state service.
2. Copies of the personnel file should be forwarded to the new agency at the receiving agency's request.



V. Retention and Disposal of Personnel Records

- A. Records must be destroyed in accordance with the Library of Virginia Retention and Disposition Schedule, No. GS-103 *Personnel Records*, in a manner that prevents accidental disclosure of personal information.
- B. Employee personnel files must be retained at the last place of employment for five years after the employee's separation from the DOC; the long-term personnel record is saved electronically in Cardinal.
 - 1. For Headquarters, Regional Offices, Community Corrections, P&P Offices, and CCAP's, the Human Resources Unit at Headquarters will maintain personnel records for five years after separation.
 - 2. For the facilities and Virginia Correctional Enterprises that maintain the official personnel record, the unit will maintain personnel records for five years after separation.
- C. Employee medical records must be retained at the last place of employment for 30 years after the employee's separation from the DOC.

VI. Expungement of Material

- A. Employees may challenge the information in their personnel file, and have it corrected or removed if it is proved inaccurate. (5-ACI-1C-21, 4-ACRS-7E-12, 4-APPFS-3E-13)
- B. Material can only be expunged from an employee's personnel file with the approval of the Organizational Unit Head, the next higher level of management, and the Director of Human Resources.

VII. Confidentiality and Disclosure

- A. Personnel records are confidential and may be released only to authorized personnel. Employees responsible for the preparation, maintenance, and custody of personnel records must hold the content of such records in strict confidence, except as provided by law and DOC Operating Procedure. (2-CO-1F-06)
- B. Failure to maintain confidentiality or comply with the provisions of this procedure will be subject to disciplinary action under Operating Procedure 135.1, *Standards of Conduct*.
- C. Employees have the right to see and request a copy of information in their personnel files unless:
 - 1. disclosure is prohibited by law; or
 - 2. the records in question are medical and/or mental health records that the employee's health care providers have requested in writing remain confidential.
- D. Employees seeking access to their personnel file should arrange an appointment with their Human Resource Officer. A representative of Human Resources must be present during the review of the personnel file.
- E. The individuals/agencies who may have access to the personnel file without the consent of the subject employee include, but are not limited to the following:
 - 1. The employee's supervisor and, with justification, higher level managers in the employee's supervisory chain.
 - 2. The employee's agency head or designee and agency human resource employees, as necessary.
 - 3. Specific private entities which provide services to state agencies through contractual agreements (such as health benefits, life insurance, Workers' Compensation, etc.) to provide such services.
 - 4. Questionable cases must be referred to the Director of Human Resources or Employee Relations Manager.
- F. All requests for personal information about employees by third parties should be directed to the employee's Human Resource Officer, the Human Resource Unit at Headquarters, for verification. It is



not necessary for these requests to be in writing.

G. The following personal information is considered public information and must be disclosed to third parties upon request and may be disclosed without the subject employee's knowledge or consent:

1. Name
2. Position
3. Job classification (class specification)
4. Annual salary
5. Allowances
6. Date and place of employment
7. Employer's work telephone number
8. Reimbursements for expenses

H. Other personal information that is not considered public information may be furnished to a third party only if the request is written and accompanied by a signed release from the employee. This information includes, but may not be limited to the following:

1. Performance evaluations
2. Eligibility for re-employment
3. Reason for termination
4. Personal information such as race, sex, age, home address, home telephone number, personal e-mail address, marital status, dependent's names, insurance coverage, employee identification number, or social security number except in instances when required by law.

I. Information on substantiated allegations of sexual abuse or sexual harassment involving a former employee must be furnished to any employer for whom the employee has applied to work provided the request is written. (§115.17 [h], §115.217 [h])

J. Only that information which is specifically requested will be provided.

K. Requests for personal information not considered public information from third parties other than the employee's supervisors and employees having custody of personnel records should be documented using an *Employee Verification/Information 102_F26* or copy of the third party's employee verification/information request form. These forms should be placed in the employee's personnel file or documented in the employee database.

L. Associated Costs

1. Employees are entitled to one free copy of their personnel file during the calendar year, including any material added to the file during that year. Employees who request additional copies will be charged for the actual cost to retrieve and duplicate the documents.
2. Readily available documents provided electronically should be furnished at no cost.
3. The following charges may be assessed for document copying and printing:
 - a. Charge for each page or copy per the latest *Copy Charges Memorandum*.
 - b. Postage or shipping cost (cheapest available or as requested by recipient).
 - c. Reasonable costs, not to exceed the actual cost of labor for additional research required to locate and copy records that are not readily available for copying, such as records that are archived or are maintained in legacy databases.
 - i. When calculating staff time, the equivalent hourly wage for the employee(s) performing the research, search, or redaction will be used.

- ii. The cost of employee fringe benefits must not be included in the costs assessed.

VIII. Employee Medical Records

- A. Organizational Unit Heads and Human Resources Officers are responsible for properly obtaining and securing all employee medical information.
- B. Information regarding the medical condition or history of applicants and employees must be collected and maintained in medical files stored separately from all other files and treated as a confidential medical record. (5-ACI-1C-20; 4-ACRS-7E-11; 4-APPFS-3E-12; 2-CO-1C-23; 1-CTA-1C-11)
- C. Employee medical records are maintained only by Human Resources Offices and information regarding the medical condition or history of employees may not be kept in any other file unless specifically authorized by the Director of Human Resources or designee.
- D. All documents containing information regarding the medical condition or history of applicants and employees must be treated as official medical information and must be confidentially maintained in the Employee Medical Record by the Human Resources Office.
- E. Employee Medical Records must include, but are not limited to, the following:
 - 1. Medical Certification
 - a. Employees should forward medical certifications directly to the local unit Human Resources office in a confidential manner to be filed in their medical record.
 - b. Human Resources should review the documentation and advise supervisors if their employees may be out of work, when they will return to work, or if there are medically necessary work restrictions.
 - c. Medical information is not to be filed anywhere other than in the employee's medical file.
 - d. This includes medical information taken from the certification and transcribed elsewhere.
 - 2. Workers' Compensation Records
 - a. All Workers' Compensation records that include any reference to an employee's illness or injury, diagnosis, prognosis, course of treatment, including medication or therapy, for any Workers' Compensation claim.
 - b. To facilitate records retention, a separate Workers' Compensation file will be maintained adjacent to the medical file to hold all related employee Workers' Compensation Records.
 - 3. Results of any medical screening, physical or psychological evaluations, tests including drug test results, or examination of an employee including medical screening and/or physical examination for employment.
 - 4. Medical verification provided by any health care provider due to a medical condition or medical appointment.
 - 5. Any documentation of vaccinations or related documents such as employee declination forms.
 - 6. Any medical information volunteered or disclosed by an employee and any handwritten notes scribed by a supervisor, Human Resources Officer, or other employee.
 - 7. Any medical documentation submitted in support of a request for a temporary work adjustment or in support of an Americans with Disabilities Act (ADA) request for reasonable accommodation. The organizational unit's Human Resources Office must maintain copies of such requests and the ADA Committee decision in the employee's medical file. The DOC Benefits Manager must maintain the ADA Request and a copy of the ADA decision in a separate locked file at headquarters.
 - 8. Any Family Medical Leave Act (FMLA) requests and supporting documentation including FMLA response letters and tracking sheets as appropriate.
 - 9. Any correspondence from the third-party administrator related to employees' absences for disability.

IX. Access to Medical Records

- A. Employee medical records will be stored in a secure physical or electronic location and maintained as to ensure confidentiality. Access to an employee's medical record must be strictly limited to the following:
 - 1. The subject employee.
 - 2. The Human Resources Officer.
 - 3. Employees responsible for processing Workers' Compensation claims.
 - 4. A member of the ADA Committee or Headquarters Human Resources Office staff if approved by the Director of Human Resources.
- B. Access Exceptions - Any exception to this operating procedure where access to an Employee Medical Record is requested must have the written approval of the Director of Human Resources or designee.
- C. Use and Disclosure - Employee medical information may be used or disclosed with proper authorization as outlined under the following circumstances:
 - 1. Lawsuits and Disputes - If an employee is involved in a lawsuit or other legal action, the employee's medical information may be disclosed in response to a Court or administrative order, a subpoena, warrant, discovery request, or other lawful due process.
 - 2. Workers' Compensation/Americans with Disabilities Act (ADA) - Medical information may be disclosed when it is authorized and necessary to comply with Workers' Compensation and ADA laws or other similar programs.
 - 3. Military and Veterans - If an employee becomes a member of the U.S. armed forces, medical information may be released about that employee, as deemed necessary by military command authorities.
 - 4. Office of Law Enforcement Services - Special Agents assigned to the Office of Law Enforcement Services when conducting formal inquiries, may be granted access to employee medical information when authorized by a Court of lawful jurisdiction or binding administrative order, a subpoena, warrant, or other lawful due process. Lawful due process includes a release signed by the employee.
 - 5. To Avert Serious Threat to Health or Safety - Medical information may be disclosed when necessary to prevent a serious threat to the health and safety of an employee or member of the public. In this case, employee medical records may be provided by the following:
 - a. DOC medical personnel, including contract medical staff.
 - b. The Administrative Duty Officer, shift commander, any HR representative or highest-ranking employee present at the Organizational Unit at the time of the emergency.
 - c. Any employee responsible for, or participating in, an emergency response situation with a need to know the medical information, including the Institutional Safety Officer or other employee designated to complete OSHA reports.

X. Employee Medical Record Maintenance

- A. The following positions are responsible for the maintenance and security of employee medical records in their respective organizational units. The Director of Human Resources must approve exceptions to this requirement.
 - 1. Human Resources Officers in facilities and Virginia Corrections Enterprises.
 - 2. DOC Human Resources Unit for community corrections (P&P and CCAPs) and employees at Headquarters.
- B. The Headquarters Risk Management Unit will maintain information on Workers' Compensation for institutions and Virginia Correctional Enterprises and duplicates may be kept by the facility/unit. Duplicate Workers' Compensation will be handled pursuant to this operating procedure and Operating



Procedure 261.3, *Workers' Compensation*. For employee transfers within the DOC, the Workers' Compensation file must be transferred with the personnel file to the receiving unit.

- C. Employee medical records must be kept separately from other records and must be stored in a file that always remains locked except when access is deemed necessary. Medical information, including health care provider's notes and FMLA requests, will not be kept in supervisor fact files; there will be no exceptions to the storage of medical files.
- D. When an employee transfers within the DOC, the employee's medical record must be transferred with the personnel file to the receiving unit. When an employee transfers to another State agency, the medical record must remain with the DOC.
- E. Medical records must be maintained and destroyed in accordance with State guidelines, see Library of Virginia Retention and Disposition Schedule, No. GS-103 *Personnel Records*.

REFERENCES

Library of Virginia Retention and Disposition Schedule, No. GS-103 *Personnel Records*

DHRM Policy 6.05, *Personnel Records Disclosure*

DHRM Policy 6.10, *Personnel Records Management*

Operating Procedure 040.1, *Litigation*

Operating Procedure 135.1, *Employee Standards of Conduct*

Operating Procedure 240.1, *Travel*

Operating Procedure 261.3, *Workers' Compensation*

Operating Procedure 323.1, *Vehicle Acquisition, Operation, and Maintenance*

Document Copying and Printing Charges

ATTACHMENTS

None

FORM CITATIONS

Authorization for On-going License/Background Checks 102_F8

Employee Personal Data Sheet 102_F25

Employee Verification/Information 102_F26

Employee Expense Reimbursement 240_F6