GENERAL ADMINISTRATION
EMPLOYEE

043 GENERAL OFFICE POLICIES

043.11 Medical Documentation Policy

043.11.1 Purpose

The policy describes the Human Services Department (HSD) position on medical documentation that may be required for a variety of purposes in the course of HSD employment.

043.11.2 Definitions

A. "Medical data" means facts and items of information pertaining to physical or behavioral health examinations and treatment.

B. "Medical documentation" means records and documentation pertaining to physical or behavioral health examinations and treatment.

C. "Serious Health Condition" means an injury, illness, impairment, or physical or mental condition that involves:

1. Inpatient care means an overnight stay in a hospital, hospice, or residential medical care facility, including any period of incapacity, or any subsequent treatment in connection with such inpatient care; or

2. Continuing treatment by a health care provider including any one of more of the following:

a) A period of incapacity of more than three consecutive, full calendar days, and any subsequent treatment or period of incapacity relating to the same condition that also involves:

1) Treatment two or more times within 30 days of the first day of incapacity, unless extenuating circumstances exist, by a health care provider or under orders of a health care provider; or
2) Treatment by a health care provider on at least one occasion which results in a regimen of continuing treatment under the supervision of the health care provider.

b) Any period of incapacity due to pregnancy, or for prenatal care.

c) Any period of incapacity or treatment for such incapacity due to a chronic serious health condition which:

1) Requires periodic visits (defined as at least twice a year) for treatment by a health care provider or under direct supervision of a health care provider;
2) Continues over an extended period of time (including recurring episodes of a single underlying condition); and
3) May cause episodic rather than a continuing period of incapacity (e.g., asthma, diabetes, epilepsy).

d) A period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective but under the continuing supervision of a health care provider.

e) Any period of absence to receive multiple treatments (including any period of recovery therefrom) by a health care provider or under the orders of a health care provider either for restorative surgery after an accident or other injury, or for a condition that would likely result in a period of incapacity of more than three consecutive calendar days in the absence of medical intervention or treatment (such as chemotherapy, radiation, etc.).

043.11.3 Policy

A. HSD maintains uniform, consistent procedures for requesting, submitting, filing and gaining access to medical information while at the same time ensuring its confidentiality.

B. HSD's Office of Human Resources (OHR) may require medical documentation to be submitted by an employee for a variety of purposes including but not limited to the following:

1. justify using sick leave, leave without pay (LWOP) or Family and Medical Leave (FMLA);
2. document a medical condition justifying a transfer of donated annual leave;
3. document fitness for duty when the need arises to question the continued ability of an employee to do the job;
4. certify that an employee is able to return to work after an absence for medical reasons;
5. determine if an employee is entitled to a reasonable accommodation under the Americans with Disabilities Act (ADA), and if so, help identify an effective accommodation; and
6. provide supporting documentation for a Workers' Compensation claim.

C. Medical documentation pertaining to physical or behavioral health examinations and treatment of persons, including those confined to any institutions are considered confidential under state law and State Personnel Board Rules (Subsection C of 1.7.1.12 NMAC). Medical documentation maintained for purposes of the Americans with Disabilities Act are also regarded as confidential.

D. Employee medical information shall not be used to illegally discriminate against an employee in any employment practice. Use of medical or behavioral health information to illegally discriminate in any manner against an employee is grounds for disciplinary action up to and including dismissal.

E. All supervisors should obtain approval from OHR before requesting medical documentation.

043.11.4 Ensure Confidentiality of Information

A. Individuals Authorized to be Informed of or Inspect Medical Data

People on a strict need-to-know basis who may be informed of or permitted to inspect employee medical data include:

1. Supervisors and managers;

2. Health care professionals who are evaluating an employee's medical information or otherwise making medical examinations or inquiries as authorized by law;

3. Rehabilitation specialists, occupational and physical therapists, organizations with expertise in adaptations for specific disabilities, and other similar professional personnel who are evaluating employee medical information as authorized by law or HSD policy;

4. Officials charged with investigating or otherwise assuring compliance with HSD policies and state and federal laws and regulations (such as, the EEO Officer, designated human resource personnel, legal or investigative staff, Human Rights Division or EEOC staff);

5. Employees who process documents containing medical data or who are designated to file or maintain medical records;

6. Officials from Workers' Compensation and insurance companies; and

7. Persons presenting signed releases from employees designating them as authorized recipients.

B. Prohibition Against Divulging Medical Data to Unauthorized Persons

Employees authorized to be informed of or inspect employee or employee family member medical data may not divulge or release such data to unauthorized persons inside or outside HSD. Employees who inadvertently come upon such medical data (e.g. by opening a misrouted letter) may not divulge such data to other persons.

C. Security and Maintenance of Medical Information

All employee medical data and documentation, including information about an employee's family member, shall be maintained in locked files separate from other employee records. Medical data and documentation and other employee information shall not be located in the same file cabinet. OHR will maintain general medical data and documentation files for HSD. Only designated staff in OHR have access to the medical file. Medical data and documentation in the possession of individual offices shall be forwarded to OHR.

043.11.5 Maintaining Maximum Confidentiality

A. An employee who prefers maximum confidentiality regarding a serious health condition may use the following procedure:

1. If medical documentation is requested, the employee submits such documentation directly to the OHR Medical Issues Coordinator.

2. The OHR Medical Issues Coordinator, after reviewing such documentation, will inform the employee's immediate supervisor whether or not the requested leave should be approved.

3. Information regarding the medical condition triggering the need for leave or any long-term prognosis for the condition will not be disclosed to unauthorized individuals. All such medical data and documentation will only be maintained in confidential files in OHR.

B. This procedure is available for leave requests, annual leave donation requests, "fitness for duty" inquiries, certification of ability to return to work, and reasonable accommodation requests.

043.11.6 Form for Supplying Medical Documentation

OHR will provide employees with its *Certification of Health Care Provider Form* for requesting and submission of medical data. Medical data in another format may be accepted if it contains all the information requested on OHR's *Certification of Health Care Provider Form.* OHR's *Application for Family Medical Leave, Annual Leave Donations, and Leave without Pay for Medical Reasons Form* must also be submitted as appropriate.

043.11.7 Right to Require Additional Medical Documentation

Submission of OHR *Certification of Health Care Provider Form* does not waive HSD's right to request additional or clarifying information, or to request additional releases from an employee for health care provider(s) to supply information, or to require an employee to secure a second and third medical opinion at HSD's expense. Any request for additional medical documentation should have prior approval from OHR. Failure to submit additional information as required may be cause for denial of the employee's

request and/or placement on AWOL and/or disciplinary action. Examples of additional documentation follow.

1. Sick Leave: Medical documentation may be required. See HSD's *Annual and Sick Leave Policy.*

2. Leave without Pay (LWOP) for Medical Reasons: Medical documentation may be required when LWOP is requested for medical reasons. See HSD's *Leave without Pay Policy.*

3. Family and Medical Leave (FMLA): Medical documentation shall be required for FMLA. See HSD's *Family and Medical Leave Policy*

4. Request for Leave Donations: Medical documentation shall be provided in all cases when leave donations are requested by an employee. See HSD's *Leave Donation Policy.*

5. "Fitness-for-Duty" Inquiries: The OHR Manager may require an employee to provide documentation that is job related and consistent with business necessity, to determine if the employee is able to do the job and/or poses no significant, direct threat to the employee's or others' health and safety.

6. Certification That an Employee is Able to Return to Work: Medical documentation or certification may be required by an employee returning to work after medical leave. See HSD's *FMLA Policy*, *Leave without Pay Policy*, *Leave Donation Policy*, *Annual and Sick Leave Policy*, and *Public Health Emergency Threat Policy.*

7. Medical Information Necessary for Reasonable Accommodation: Medical information may be required, if an employee requests an accommodation on the basis of disability, in order to determine if the employee has a medical condition covered by ADA, is entitled to an accommodation, and if so, to help identify an effective reasonable accommodation. See HSD's *ADA Reasonable Accommodation Policy.*

8. Public Health Emergency Threat: Medical documentation may be required for an employee to qualify for paid administrative leave during or returning to work following an Enhanced Public Health Advisory or a Public Health Emergency: See HSD's *Public Health Emergency Threat Policy.*

9. Employee Assistance Program (EAP): Documentation from an EAP provider demonstrating an employee's attendance, cooperation, and compliance may be required for those employees whose EAP participation is mandated by the OHR Manager.

043.11.8 References

Americans with Disabilities Act
Section 14-2-1, NMSA 1978
State Personnel Board Rules
New Mexico Human Services Department

APPROVED:

PAMELA S. HYDE, J.D., Secretary

DATE: 6/26/09