DEPARTMENT OF CORRECTIONS

Policy Number:	**103.226**
Title:	**Fitness for Duty**
Effective Date:	**6/19/18**

PURPOSE: Ensure employees are physically and mentally fit to perform the essential functions of their position. Provide a process for assessing an employee's physical and/or mental ability to safely perform the essential functions of the employee's job.

APPLICABILITY: All employees

DEFINITIONS:

Appointing authority - for purposes of this policy, the AA at correctional facilities is the Warden/Superintendent/designee; for field services, the Field Services Director/designee; for Central Office, the Deputy Commissioner(s)/Assistant Commissioner(s)/designee; and for shared services units, the senior unit manager, e.g. Director of Health Services.

Contract medical professional (CMP) – a licensed health care professional who is under contract with the department to provide FFD evaluations.

Direct threat - a significant risk of substantial harm to the health or safety of the employee or others in the workplace that cannot be eliminated or reduced by reasonable accommodation. Risk factors to be considered include: (1) the nature and severity of the potential harm, (2) the likelihood that potential harm will occur; (3) the imminence of the potential harm; (4) the anticipated duration of the risk; and (5) the availability of any reasonable accommodation that would reduce or eliminate the risk of harm.

Essential job functions - the fundamental job duties that an employee must be able to perform, with or without reasonable accommodation.

Fitness for duty (FFD) evaluation – a procedure or test given by a qualified health care professional to assess an employee's physical and/or mental health. Such an evaluation is used to help determine whether an employee is able to safely and effectively perform the essential functions of the employee's job.

PROCEDURES:

A. The AA must follow the procedures defined in this policy as well as other policies that apply to the specific situation. The AA must consult with the regional human resource director (RHRD) and deputy/assistant commissioner to determine the need for a FFD evaluation. ADA accommodations should be explored prior to a FFD evaluation, if time permits, as outlined in policy 103.310, "Reasonable Accommodation."

B. If the AA believes an employee cannot perform the essential job functions of the employee's position due to a medical condition or the employee is a direct threat and there is a high probability of substantial harm, the AA may require the employee to participate in a FFD

evaluation for the purposes of determining the employee's FFD. The AA/designee considers the following, as applicable, in making FFD decision:

- Documentation of problematic workplace behavior (a pattern of conduct or an episode of egregious behavior) that impacts safety and security;
- Reason to believe that this behavior is related to a medical condition;
- Evidence that the employee's ability to perform the essential job functions of the position is impaired by a medical condition;
- Evidence that the employee is or will be a direct threat due to a medical condition;
- Consideration of a less intrusive alternative to an evaluation;
- Consideration of a reasonable accommodation for the medical condition.

C. If the AA determines a FFD evaluation is necessary, the AA/designee, RHRD/designee and appropriate deputy or assistant commissioner/designee determines if the employee is placed on paid administrative leave until the conclusion of the FFD process. Documentation of approval to proceed with the FFD is retained by the RHRD/designee.

1. The RHRD/designee and AA/designee contacts and consults with the CMP. If the CMP determines that a FFD evaluation is appropriate, the RHRD/designee provides the CMP with the employee's position description, the physical demands analysis for the position, and any other pertinent information.

2. If the CMP determines a FFD evaluation is not necessary, the RHRD/designee consults with the AA/designee on the CMP's recommended course of action and further direction.

3. If the CMP determines a FFD evaluation is necessary, the RHRD/designee contacts the employee to explain the process and reasons why a FFD evaluation is being requested. The CMP is responsible for securing any signed releases of medical information from the employee that may be necessary.

D. Notification of employee

1. If the employee does not voluntarily agree to participate in the FFD evaluation, the RHRD/designee and the AA/designee must determine next steps.

2. If the employee voluntarily agrees to the FFD evaluation, the RHRD/designee ensures the employee signs the Authorization for Fitness for Duty Evaluation form (attached) and contacts the CMP who schedules the FFD evaluation, generally within five (5) calendar days of contact.

3. The RHRD/designee must contact the employee with the date, time, and location for the FFD evaluation. The RHRD/designee must:
   a) Provide the employee a name and phone number to contact to confirm the appointment, location, and any questions the employee may have.
   b) Inform the employee that it is the employee's responsibility to keep the appointment and the CMP is responsible for making a return to work recommendation.
   c) Inform the employee of the employee's current status (i.e. paid administrative leave, medical leave), anticipated duration of current status, and/or encourage the employee to request a medical leave.

E. Results of FFD evaluation

1. The CMP must discuss with and release the results of the FFD evaluation to the RHRD/designee. The RHRD/designee then discusses the evaluation results with the AA/designee.

2. If treatment is recommended/required by the CMP, the CMP instructs the employee to follow-up with the employee's health care professional.

3. Final results or treatment progress from the employee's health care professional must be provided to and reviewed by the CMP. The CMP must review the information and provide the RHRD/designee with a return to work recommendation. The return to work recommendation must include any work limitations and/or restrictions.

4. The AA/designee, in consultation with the RHRD/designee, based upon all available information, including the results of the FFD evaluation and the recommendation of the CMP, determines if the employee may return to work.
   a) If approved to return to work by the CMP, consideration should be given to the procedures outlines in DOC Policy 103.240 "Return to Work Program" and DOC Policy 103.310 "Reasonable Accommodation," if appropriate.
   b) If the recommendation from the CMP is the employee may not return to work, the RHRD/designee must consult with the AA for further action.

5. The RHRD/designee must retain copies of the results of the evaluation in the employee's medical file.

F. The information obtained through this process and the discussions regarding an employee's FFD are governed by the Minnesota Government Data Privacy Act.

INTERNAL CONTROLS:

A. A copy of relevant medical documentation is stored in the employee's medical file.

ACA STANDARDS: 2-CO-1C-01 (BP16); 2-CO-1C-19; 4-4048 (BP4); 4-4062; 4-JCF-6C-06; 1-ABC-1C-13

REFERENCES:
Minnesota Human Rights Act (MHRA)
Americans with Disabilities Act (ADA)
Equal Employment Opportunity Commission (EEOC)
Policy 103.240, "Return to Work Process"
Policy 103.310, "Reasonable Accommodation"

REPLACES: Policy 103.226, "Fitness for Duty/Prevention of Workplace Violence," 11/21/17. All facility policies, memos, or other communications whether verbal, written, or transmitted by electronic means regarding this topic.

ATTACHMENTS: Authorization for Fitness for Duty Evaluation form (103.226A)

APPROVALS:
Deputy Commissioner, Community Services
Deputy Commissioner, Facility Services
Assistant Commissioner, Facility Services

Assistant Commissioner, Operations Support