

U.S. DEPARTMENT OF AGRICULTURE
WASHINGTON, D.C. 20250

DEPARTMENTAL REGULATION		Number: 4430-792-1
SUBJECT Employee Assistance Program	DATE: August 1, 2003	
	OPI: Office of Human Resources Management	

1 PURPOSE

This regulation establishes requirements for Department of Agriculture (USDA) agencies to develop and implement an Employee Assistance Program (EAP).

2 POLICY

- a Agencies must provide appropriate programs and services to employees whose emotional, personal, alcohol, and/or drug problems may affect their work performance or conduct.
- b Agencies may join a consortium, negotiate their own contracts, join existing EAP agreements, or provide in-house counseling which meets the requirements of Title 5 Code of Federal Regulations (CFR), Part 792. The Office of Human Resources Management (OHRM), Safety, Health and Employee Welfare Division (SHEWD), will assist agencies in program development.
- c To the extent feasible, and when it will enhance the performance of the employee, agencies are encouraged to extend these services to families of employees with alcohol and or drug abuse problems and to employees who have family members with these problems as authorized by Title 5 United States Code (U.S.C.), 7361-7362.

3 DEFINITIONS

- a EAP means a USDA confidential counseling program that offers assessment, short-term counseling, and referral services to employees for a wide range of drug, alcohol, and mental health problems, and monitors the progress of employees while in treatment.

- b EAP Coordinator means the individual designated by USDA Mission Area/Agency Heads and staff office directors as responsible for implementing and operating the EAP within their agency.
- c Employee means an individual meeting the criteria described in 5 U.S.C. 2105.
- d Extending services to families means allowing counseling of family members where the treatment or counseling concerns the alcoholism or drug abuse of the employee him/herself, and for employees where the counseling relates to the alcohol or drug abuse problem of the family member. Agencies are not authorized to use appropriated funds to meet personal needs of employees' family members.

4 AUTHORITIES

- a 5 U.S.C. 552a establishes requirements governing the maintenance of records by agencies pertaining to individuals and access to these records by the individual(s) to whom they pertain.
- b 5 U.S.C. 7361-7362 requires Federal agencies to develop appropriate prevention, treatment, and rehabilitation programs and services for drug abuse, alcohol abuse, and alcoholism among employees.
- c 5 U.S.C. 7901 authorizes Federal agencies to establish health service programs to promote and maintain the physical and mental fitness of employees of the Federal Government.
- d Executive Order 12564, dated September 15, 1986, "Drug-Free Federal Workplace," established the goal of a Drug-Free Workplace through education and training programs, drug testing programs, and employee assistance programs.
- e 5 CFR Part 792 requires Federal agencies to: Provide prevention, treatment, and rehabilitation services to Federal civilian employees with alcohol and/or drug abuse problems; establish and administer

short-term counseling and/or referral programs to assist civilian employees with alcohol and/or drug abuse problems; issue internal program instructions; and submit an annual fiscal year report to the Office of Personnel Management (OPM) on their counseling activities.

- f 42 CFR Part 2, Confidentiality of Alcohol and Drug Abuse Patient Records, prohibits disclosure of information without the patient's written consent.
- g Comptroller General (CG) Decision B-187074, dated November 7, 1977, holds that under 5 U.S.C. 7901, an agency may expend appropriated funds for the procurement of diagnostic and preventive psychological counseling services. Such services should not include treatment, but rather problem identification, referral for treatment or rehabilitation and follow-up to aid an employee in effective readjustment on the job during and after treatment.
- h CG Decision B-226569, dated November 30, 1987, allows reimbursement for local travel expenses for visits to an EAP Counselor at a different location when an agency determines that the travel is advantageous to the government.
- i Department of Agriculture's Plan for a Drug Free Workplace that was certified to Congress by the Department of Health and Human Services on April 27, 1988, as meeting the requirements of Public Law 100-71 (codified at 5 U.S.C. Section 7301), and Executive Order 12564 on Drug-Free Workplace Programs. The Secretary of Agriculture and the Department of Health and Human Services have approved all subsequent changes and modifications made to the 1988 certified plan.

5 RESPONSIBILITIES

- a The Assistant Secretary for Administration (ASA) will: Advise the Secretary of Agriculture, mission areas/agency heads, and staff office directors in the development and implementation of policies, programs, and oversight of EAPs.

- b The Director, Office of Human Resources Management (OHRM) will:
 - (1) Advise the ASA in planning, developing, and implementing policies, programs, and systems to manage EAPs; and,
 - (2) Provide and interpret USDA policies and standards for EAPs.

- c The Director, Safety, Health and Employee Welfare Division (SHEWD), OHRM will:
 - (1) Provide oversight of EAPs; and,
 - (2) Provide agency officials with technical assistance and consultative services for complex EAP issues.

- d The Mission Areas/Agency Heads/Staff Office Directors will:
 - (1) Designate an EAP coordinator to coordinate the program with both external sources and internal USDA offices;
 - (2) Issue policy statements and implementing instructions;
 - (3) Develop and maintain programs for short-term counseling (not to exceed 6 to 8 visits) and/or referral services for employees with personal problems (e.g., emotional, financial, legal), alcohol, and/or drug abuse problems;
 - (4) Provide for education and awareness programs to inform employees of the counseling and referral services and to emphasize prevention, early intervention, and treatment;
 - (5) Provide for training to help managers and supervisors recognize (NOT diagnose) early signs of potential problems, which could involve alcohol/drug abuse, and to understand confrontation and referral procedures.

6 PROGRAM ADMINISTRATION

a Employee Participation:

- (1) Employees may voluntarily participate in EAP or their supervisor may refer them for counseling on personal, alcohol, and/or drug problems that adversely affect work performance or conduct.
- (2) Except as otherwise provided in paragraph 6a(4), failure to voluntarily participate in counseling or in a rehabilitative program at the referral of a supervisor can not be used as the basis for taking disciplinary action against an employee.
- (3) Employees who fail to improve their conduct or performance, after a referral to the EAP, may have a conduct or performance-based action initiated against them.
- (4) The Department's Plan for a Drug-Free Workplace provides that employees may be subject to disciplinary action, including removal from service, for refusing to obtain counseling or rehabilitation after having been found to use drugs, or for refusing to take a drug test when required.
- (5) Costs associated with treatment (beyond the assessment sessions provided by the EAP counselor) are the responsibility of the employee. Employees can use their Federal employee health benefits plan for financial assistance with covered services.
- (6) With supervisory approval, employees may be allowed up to one hour (or more as necessitated by travel time) of excused absence for each counseling session during the assessment/referral phase. Thereafter, absences during duty hours for rehabilitation or treatment must be charged to the appropriate leave category in accordance with law and leave regulations.

- b Confidentiality: The statutory regulation published in 42 CFR Part 2 covers all alcohol/drug abuse records maintained in an EAP. Unauthorized release of any information covered under this provision could result in fines up to \$5,000. Under certain circumstances, however, a counselor may disclose information without the patient's written consent. For example, any instances of suspected child abuse and neglect may be reported to appropriate State or local authorities. Also, when a patient commits, or threatens to commit, a crime that would harm themselves or someone else, or cause substantial property damage, law enforcement personnel may be informed. All personnel designated or expected to perform EAP functions must be thoroughly familiar with these regulatory provisions. Counselors must provide employees participating in an EAP with information about this regulation. Under Section 503 of Public Law 100-71, the results of a drug test of any employee may not be disclosed without the prior written consent of the employees, unless one of the exceptions enumerated in the Public Law is satisfied.

- c Records: The Privacy Act (5 U.S.C. 552a) and confidentiality regulations (42 CFR Part 2) provide guidelines for maintaining USDA EAP consortium and agency EAP records. These laws and regulations establish the circumstances justifying release of these records. Employees receiving counseling services must receive a copy of the USDA Privacy Act Statement pertaining to EAP records.

7 INQUIRIES

Direct all inquiries to the Office of Human Resources Management, Safety, Health and Employee Welfare Division; Room 3021 South Building, Washington, D.C. 20250; telephone number (202) 720-8248.

-END-