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DEPT. OF TRANSPORTATION  
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March 22, 2000

To: Docket Clerk  
Attn: Docket No. OST-99-6578 - 46  
Department of Transportation  
400 7<sup>th</sup> Street, SW-Room PL401  
Washington, D. C. 20590

From: Dale Kaplan, LCSW-C, MSWAC  
Vice President Clinical Services  
Employee Health Programs

Re: Comments on Proposed Changes for 49 CFR 40

Employee Health Programs (EHP) commends the Department of Transportation's (DOT) for recognizing the need to establish greater clarity in regard to the Substance Abuse Professional's role and responsibilities in the proposed rewrite of Part 40 of the Code of Federal Regulations. There are several areas in subpart 0 which EHP believes need to be expanded in order to achieve the quality standard necessary to provide for public safety.

Employee Health Programs, founded in 1989 by Donald Ian Macdonald, M. D., is a national provider of Drug Free Workplace programs, Employee Assistance Programs, and Background Investigation services based in Bethesda, Maryland. EHP provides services to assist employers in the development, implementation, and management of programs designed to promote a healthier workforce. Since 1993, Employee Health Programs has been offering substance abuse assessments for employers who wanted to rehabilitate employees in safety sensitive positions following a positive test. A national network of licensed mental health professionals with experience and training in the field of substance abuse was established. When the Department of Transportation regulations were established, EHP expanded its existing network of clinicians to meet the volume of requests for assessments under the DOT. EHP's responses to the proposed regulations are the result of our experience working with SAPs, employees and employers.

#### **40.281 Qualifications of a SAP**

EHP supports DOT's proposal for additional training and the need for the SAP to understand the DOT agency regulations. We further request that DOT support the establishment of a

certification process for **SAPs** administered by an appropriate professional agency or agencies. The type of educational program provided by the American Society for Addiction Medicine (**ASAM**) with a subsequent examination provided by the Medical Review Officer Certification Council for Medical Review Officers is an excellent model of the type of training program needed for **SAPs**. Through our intensive work with Substance Abuse Professionals throughout the United States, **EHP** became aware of the need for a comprehensive training program which includes information on drug/alcohol testing, the laboratory procedures, role of the Medical Review Officer, the DOT regulations, **the** **SAP** Procedures Guideline, current issues in dual diagnosis, medications and addictions, level of care standards, and public safety issues. **EHP** has found **SAPs** who do not understand drug testing and the role of the Medical Review Officer, who do not understand the complicating factor of public safety when determining when an employee has complied with the **SAP** recommendation, and who do not understand how to interpret **the** **ASAM** standards for level of care determinations. **EHP** recommends that an examination be administered following **the** training and a certification given if the examination were passed. In order to stay current, **SAPs** should have to attend this type of course every two/three years due to the changes in the fields of addiction, drug testing and Federal regulation.

Based on our experience, **EHP** believes that the recommended steps in the proposed revision are not adequate to close the gap which presently exists in the quality of **SAP** assessments. When **EHP** became aware of the need for an educational training program for **SAPs**, **EHP** approached the National Association of Social Workers in **1996** about the possibility of establishing an educational program but there was no response. Unfortunately, the number of **SAPs** requiring this type of training is not large. This is complicated by the various areas of expertise that a Substance Abuse Professional needs. There may need to be a partnership of the professional organizations whose members are qualified to be **SAPs**. **EHP** recommends that DOT support and encourage the Substance Abuse and Mental Health Administration to establish a **RFP** for a national **SAP** training program which would assist interested groups in providing such a program. **EHP** recognizes that this is an aggressive plan and a time line would need to be developed allowing **SAPs** to gain the training needed in the above areas.

It has been the experience of **EHP** that many of the current group of employees referred to the **SAP** are presenting with complex addiction and mental health issues. **EHP** believes that these employees, who have avoided testing positive over the years, are poorly motivated for change and may have severe mental illness or organic brain syndrome due to the chronic use of drugs and/or alcohol. **EHP** proposes that DOT add language to the **SAP** qualifications that includes knowledge and training in mental health and that DOT strongly recommend that **SAPs** that have only certifications, such as the **CEAP** or the **NAADAC** certification, obtain **licensure** in a mental health profession. The employees who are eligible for **SAP** assessments must also be assessed for the existence of mental health problems. The certifications alone do not assure that the counselors have adequate mental health assessment skills.

#### **40.295 No shopping for the right SAP**

**EHP** supports and commends DOT for not allowing an employee to attain another **SAP** assessment if the employee does not like the recommendation for level of care as recommended by the initial **SAP**. It has been our experience that employees do “disappear” following the **SAP**

assessment. It is recommended that a national database be established where the employee's name and date of SAP assessment can be noted. Employers and possibly SAPs should be able to access the data base to assure that the employee has not previously been assessed by another SAP.

#### **40.303 Recommendation for care following the employee's return to work**

EHP has long believed that when treatment is the recommended level of care, it is imperative that the SAP include additional care recommendations in the letter to the DER. Chemical dependency is a chronic, progressive and potentially fatal illness. Since public safety is the major concern, it is mandatory that the compliance to these additional requirements be monitored by the employer or the employer designee such as the EAP, or the SAP.

If there is a recommendation for chemical dependency treatment, there will always be additional aftercare recommendations. Therefore, if the employer plans to return the employee to safety sensitive duties, the employer must be prepared to make the appropriate and necessary accommodations in the employee's work schedule. This requirement, which is absolutely necessary and appropriate, may force companies in the trucking and bus industry to terminate rather than rehabilitate the employee. A possible solution is that DOT encourages associations representative of the industries who will have difficulty in complying with this requirement to establish focus groups to discuss how this could be accomplished, especially in those industries that provide interstate transportation services. It is recommended that DOT consider for compliance monitoring purposes alternative methods of testing, once Federally approved, such as the sweat patch which a driver could wear when on the road and unable to attend support group or aftercare meetings or hair testing. It is the responsibility of the SAP to work with the companies to determine recommendations which are feasible for an employee to accomplish. This is going to present a challenge for the employer, the employee and the SAP.

From our experience at EHP, the terminated employee presents specific challenges. The problems encountered for the SAP and possible solutions are as follow:

-EHP has found that the longer the employee waits for the SAP assessment, the more the impact of the positive test diminishes for the employee, the employee's family and sometimes the employer. As time passes, the employee's minimization of the situation strengthens. This makes obtaining the necessary information to complete the assessment and make an accurate recommendation very difficult. There should be a clear statement from the DOT to the employee encouraging a prompt assessment by a SAP when the employee has engaged in a prohibited behavior.

-There have been employees who have not followed through with meeting the recommendations for over a six month period. This is a concern, especially if education or out patient treatment was recommended, because the level of care may need to be revised due to the potential for increased use during the period following the assessment. It is proposed that DOT require that the employee follow the SAP's recommendations within 6 months of receiving the recommendations for assistance or be reassessed by the same SAP.

-If treatment was recommended and the employee successfully complied with the SAP's initial recommendations, the employee must continue to follow and document attendance to any recommendations that the SAP may prescribe. Chemical dependency treatment necessitates continuity of care, if it is to be successful and assure public safety. **For the terminated employee, it makes little sense for him/her to begin attendance to the continuing care recommendations only when hired by new employer. The possibility of relapse is high when there is no involvement in aftercare and/or support groups following completion of the initial treatment recommendations. A terminated employee, in addition to supplying the new employer with the SAP letter stating he/she has met the pre-conditions for return to a safety sensitive position, should also provide documentation that the recommendations for continuing care have been followed.**

#### **40.307 SAP and follow up testing**

EHP supports the proposed increase in the minimum testing requirement when treatment is recommended due to the level of risk of relapse during the first year of sobriety. EHP also suggests that mandatory testing be extended for 60 months. EHP's experience indicates that due to the recurrent nature of the illness of chemical dependency only 60% of the employees returned to safety sensitive positions will remain clean and sober. Increased testing in the random pool for the full 60 months may assist an employee in maintaining sobriety and safety. EHP would also support a recommendation to randomly test employees referred for treatment and subsequently returned to safety sensitive positions for the term of their employment. The argument for this is that 40% or more of the employee population returned to the workplace is going to relapse at some point.

It is recommended that DOT allow the SAP to increase the drug panel when appropriate. It has been EHP's experience that substance abusers frequently abuse drugs other than in the present panel, particularly benzodiazepines. Substance abusers can be prescribed other mood altering medications. In non DOT testing, EHP has found it effective to add benzodiazepines to the testing panel when clinically indicated. In addition, EHP has added a statement to the workplace return to work agreement between the employer and the employee noting that any physician prescribing any mood altering drugs must initially contact the MRO. In the case of benzodiazepines, the employee is fully informed that benzodiazepine would be considered a positive test, even with a physician's prescription, unless prior approval was given by the MRO. This procedure appears to be effective in assisting employees to remain clean and sober and may be a model that DOT would consider mandating.