

# 2004



# Federal Employees Health Services Handbook

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## A Message from the Director

The health and well-being of Federal employees are crucial to Government operations. President Bush recently recognized this with the HealthierUS Initiative which calls on Federal agencies to make special efforts to assist Americans in improving their fitness and health. Since the early 1970's, the Office of Personnel Management (OPM) has demonstrated its ongoing commitment to Federal employee health and counseling programs by providing program guidance, technical assistance, and training for agency practitioners.

OPM's Employee Health Services Handbook can help Federal agencies meet the President's objective of creating healthy workforce. The handbook consists of legislative and regulatory information, and guidance and resources central to the operations of Federal employee health services programs.

Agency program administrators and managers will find the Employee Health Services Handbook to be a source of valuable guidance for improving the health of Federal employees.

Sincerely,

Kay Coles James  
Director

# Introduction

## **Q: Why Are Employee Health Services Programs Needed?**

Many of the leading causes of death and disability in the United States are largely preventable through early detection, intervention and behavior changes. Your agency can adopt health policies and programs to:

- Help employees understand their risks for disease
- Help employees obtain preventive health services
- Reduce the risk of premature morbidity, mortality and disability
- Foster healthy lifestyles
- Support a healthy working environment.

Because most working Americans spend at least 30 percent of their time at work, the workplace is a logical place for employees to receive preventive health services. President Bush's HealthierUS Initiative recognizes the roles of worksites, specifically Federal worksites, in improving the health of the Nation. The HealthierUS Working Group stated, in its report to the President, "With approximately 1.7 million employees, Federal agencies have both an obligation and an enormous opportunity to offer programs and support mechanisms to improve the health of their workforce. In doing so, they can serve as examples of how employers can help alleviate the chronic disease epidemic our Nation faces." Additionally, the Department of Health and Human Services' Healthy People 2010 (health objectives for the Nation) calls for more worksites to offer comprehensive health promotion programs to their employees.

Under 5 CFR Part 792 agencies must provide employee assistance programs to assist employees with drug and alcohol abuse prevention, treatment, and rehabilitation (see Appendix 1). Under 5 U.S.C. 7901, agencies may establish, within the appropriation limits available, health services programs to promote the physical and mental fitness of employees (see Appendix 2).

## **Q: What is the Purpose of This Handbook?**

The U.S. Office of Personnel Management (OPM), in cooperation with the Department of Health and Human Services, provides policy and guidance on Federal civilian employee health and assistance programs. This handbook provides policy guidance to assist agency management and program administrators in developing and administering comprehensive employee health services programs.

## **Q: How Do I Use This Handbook?**

There are many ways to administer employee health services programs. This handbook uses a question and answer format to address the most common administrative issues. The handbook is divided into the following areas:

1. Administering Employee Health Programs - information on types of services, agency responsibilities, a variety of administrative options, and program development strategies.
2. Providing Physical Fitness Programs - information on funding and fee collection, management and design of on-site fitness facilities, the use of private facilities, and liability issues.
3. Administering Employee Assistance Programs - information on types of services, administrative options, staffing, performance, conduct and leave issues, reasonable accommodation, confidentiality, and evaluation strategies.
4. Federal Program Resources - lists of Federal contacts and resources for employee health services.

5. Web Sites - a list of employee health resources available on the Internet.
6. Appendices - copies of authorities, employee health program history, sample surveys, sample management contract, sample last chance agreement, and sample release of information.

If you have any questions regarding the topics in this handbook or anything related to employee health services, please call or write:

U.S. Office of Personnel Management  
Work/ Life Group  
Room 7425  
1900 E Street NW  
Washington, DC 20415-2000  
(202) 606-5520  
ehs@opm.gov

### Disclaimer

The names of some non-U.S. Government resources have been included in this booklet merely as an initial information service to the reader. The mention of providers by name does not constitute official sanction or endorsement of the provider by the U.S. Office of Personnel Management or the U.S. Government. Not all resources could be included in this handbook because of space constraints and other considerations. Readers and service providers who would like to suggest other resources for inclusion in any future revision of the handbook may send the name, address, and description of services to: U.S. Office of Personnel Management, Office of Work/Life Group, Room 7425, 1900 E Street, NW, Washington, DC 20415.

In any locality, there may be many reputable individuals, agencies, associations and companies that can provide the reader with additional resources. Before contracting for services, readers are encouraged to contact information sources and service providers directly for additional information, to determine which provider can best serve their needs.

Due to the rapidly changing work environment and the evolving field of employee health and assistance, care needs to be taken to use the most current guidelines available. This handbook attempts to reflect the most recent concerns, recommendations, regulations, and resources available at the time of its publication.

# Chapter 1

## Administering Employee Health Programs

### **Q: May We Establish Employee Health Programs?**

Your agency is authorized to establish employee health programs within available appropriations to promote and maintain the physical and mental fitness of employees. Employee health programs are authorized under 5 U.S.C. §7901. See Appendix 3 for a chronology of events and policies supporting employee health programs.

### **Q: What Constitutes an Employee Health Program?**

Employee health programs are most commonly provided to employees through health units located at the workplace. The basic programs include preventive services such as immunizations, physical examinations, and medical screening tests, etc.

### **Q: What Constitutes an Employee Health Program? (continued)**

Over the past few decades, many agencies have expanded the traditional scope of services, and established more comprehensive programs. These programs place more emphasis on physical fitness, health education, intervention activities, and preventive health screenings. Employee health programs are now widely established and accepted as a valuable resource for enhancing work force effectiveness.

### **Q: What Services May We Provide?**

Agencies are currently offering a wide variety of health services. Your agency chooses the services that best meet its needs. The level of services will vary from agency to agency. Under 5 U.S.C. §7901, agencies are authorized to offer the following employee health services:

#### **Emergency Response/First Aid**

Your agency's qualified medical staff may provide first response and Cardiopulmonary Resuscitation (CPR) for emergencies as well as assessment and initial treatment/first aid to employees who are injured, or become ill during work hours.

#### **Administration of Treatments and Medications**

If furnished by the employee and prescribed in writing by his/her personal physician, your agency's qualified medical staff may administer treatment/medication during working hours.

#### **Physical Examinations**

Your agency's qualified medical staff may administer properly authorized pre-placement and periodic physical examinations to assess an employee's health status. Based on the results of the exam and/or testing, medical staff may refer employees to the Employee Assistance Program (EAP), private physicians, dentists, and other community health resources.

#### **Environmental Health Hazards Appraisals**

Your agency may appraise and report work environment health hazards to department management as an aid in preventing and controlling health risks.

## Health Education

Your agency may provide health education to encourage employees to maintain a healthy lifestyle, to understand their risk for disease, and to become aware of appropriate preventive practices. For example, your agency may provide health education through health questionnaires, health risk appraisals, health fairs, newsletters, brochures, and presentations.

## Health Services/ Intervention Programs

Your agency may provide health intervention programs to promote and maintain physical and mental fitness and to help prevent illness and disease. Health Services/ Intervention Programs encourage and enable employees to initiate healthy behavior changes. Your agency may offer group activities and classes, individual counseling, demonstrations, and self help materials.

### Common Subject Areas for Health Education and Intervention Programs

Smoking cessation	Substance Abuse
Diet & Nutrition	HIV/AIDS prevention
Cholesterol Management	Exercise
Mental health and stress management	Back care
Hypertension control	Cancer prevention
	Weight control

## Q: What Services May We Provide?

### Disease Screening Examinations and Immunizations

Specific preventive health screenings or examinations may be sponsored at the workplace to detect the presence or risk of disease. Common workplace screenings include exams for blood pressure, mammography, blood lipids, glucose, vision and hearing. Medical staff may provide employees with immunizations, such as influenza and tetanus.

### Physical Fitness Programs and Facilities

Your agency may establish and operate physical fitness programs and facilities designed to promote and maintain employee health. Your agency may establish on-site fitness facilities or use the services of a private facility. Activities may be offered without special facilities. Fitness programs include activities such as walking clubs/events, aerobic exercise classes, weight lifting instruction, stretching classes, fun runs, lectures on safe participation, and fitness assessments.

Fitness assessments are physical tests that assess an employee's level of fitness as compared to his/her peers. The fitness assessment might include a one-minute sit up and push up test, 1.5 mile run, sit-and-reach flexibility test, body fat analysis, and three-minute step test.

### Public Access Defibrillation Programs

Federal agencies electing to establish a public access defibrillation program in a Federal facility must follow the guidelines contained in "*Guidelines for Public Access Defibrillation Programs in Federal Facilities*," a product collaboratively produced by the General Services Administration and the Department of Health and Human Services.

The guidebook may be obtained by calling 1-202-501-0365, or by writing the Office of Real Property (MP), General Services Administration, 1800 F Street, NW, Washington, DC 20405. See Appendix 5, where a portion of FMR Part 102-79, specifically 102.79.65, references public access defibrillation programs in Federal facilities.

## **Q: What are the Agency's Responsibilities?**

It is your agency's responsibility to:

- Determine the need for and extent of employee health programs
- Assess employee health needs and interests
- Assess and provide management support
- Assess the health policies and philosophies of the organization
- Identify available resources
- Integrate the program with other organization functions
- Determine the method for operation
- Establish a statement of goals and objectives
- Direct and monitor programs and services
- Assure that programs are safe, appropriate, and meet legal and ethical requirements
- Select qualified personnel
- Develop a program calendar
- Establish a marketing strategy to reach all employees
- Make services convenient and available to all employees
- Develop an ongoing evaluation process
- Revise and improve the program
- Negotiate or consult with unions, as appropriate, on providing services for bargaining unit employees.

\* For agencies in GSA-controlled space establishing health services programs, consult the GSA Customer Guide to Real Property, a publication of the Public Building Service. Call 202-501-1100.

## **Q: How Are Employee Health Programs Administered?**

Your agency must determine the best way to provide employee health programs based on the scope of the program and available resources. The level of services and methods for administering programs will be particular to your agency.

### **Scope**

Your program may be comprehensive or single-focused. According to the Department of Health and Human Service's Healthy People 2010, comprehensive programs must have the following elements:

- Health education
- Supportive social and work environment
- Integration into the organization's administrative structure
- Related programs such as Employee Assistance Programs
- Screening programs with follow-up

### **Available Resources**

The availability of resources (funding, space, and staff) will define the type of programs your agency can offer. Your program can be:

- Fully funded by the agency
- Funded by a combination of employee fees and agency funding
- Fully funded by employee contributions or fees.
- Remember that many successful programs run on small budgets.

## **Q: May Agencies Share Employee Health Programs?**

### **Single Agency/Multi-Agency Program**

Depending on its size and mission, your agency must determine whether to create its own program or share services with other agencies. Sometimes it is more cost effective to share employee health services and facilities with other agencies in the same building or geographic location. This can be done through interagency agreements or consortia.

### **Interagency Agreements**

To share services, your agency may enter into an interagency agreement on a reimbursable basis with another Federal agency. This process offers a convenient alternative to contracting and is often quicker and less cumbersome than the contracting process. As with contracting, your agency may choose to use one agreement to provide either all of its employee health services or just specific services such as periodic examinations.

### **Related Guidance**

The Economy Act, 31 U.S.C. §1535, gives agencies authority to enter into interagency agreements with other Federal agencies.

### **Consortia**

When no single agency can serve as a provider for smaller neighboring agencies, the combined employee populations may contract for a consortium for a single health program to provide to participating agency employees.

One lead agency generally serves as the contracting agency. The lead agency enters into a contract or agreement with a service provider. Participating agencies are linked to the contract via an interagency agreement with the lead agency. Work with your contracting office for appropriate contracting procedures.

Your agency may use the Cooperative Administrative Support Unit (CASU) program of the General Services Administration as another type of consortium. CASU organizations establish the legal and administrative framework for Federal offices to share services (including health and fitness centers and health services). Under this option, Federal tenants, located in the same or nearby facilities, establish and manage an administrative support unit that provides commonly needed services on a reimbursable basis. Such services may include, among others, health and fitness facilities and services. A tenant Board of Directors guides each local CASU. The CASU organization contracts with a vendor to provide the needed services. For further details, agencies can contact GSA's Telework and Innovative Workplaces and CASU at 202-273-4660.

## **Q: How Do We Staff and Manage Our Employee Health Programs?**

Your agency may choose to staff and manage your employee health programs from a variety of options. Your agency should ensure that the staff persons delivering health services are qualified and trained.

### **Agency Personnel**

Your agency may hire employees or use existing agency personnel to develop, manage, and deliver programs. The staff may be employed either full time, part-time, or assigned the duties on a collateral basis. Many agencies organize all of their employee health staff and programs

into one division for more efficient coordination. Sometimes agencies form employee health committees with representatives from various offices to integrate services, coordinate, and promote programs.

### **Contractor**

Contracting with qualified vendors to develop, manage, and deliver programs is a viable option for many agencies. Your agency might find a vendor through:

- Commercial health clubs
- Community centers
- Local hospitals
- Non-profit organizations
- Private consultants
- Universities.

Your agency might choose to use one contractor to provide a comprehensive program or contract for a specific service such as a health risk appraisal program or an annual health fair. Contact your contracting office for appropriate contracting procedures.

### **Volunteer**

Your agency may also provide many health activities through volunteer or no-cost arrangements. A qualified volunteer employee might give a lunch time presentation on preparing for a 10K run. An intern from a local university could conduct fitness evaluations. A volunteer employee wellness committee could organize a lunchtime walking club.

A non-profit health organization might provide free speakers for a wellness education series. Many of these local organizations provide free materials such as pamphlets, videos, and posters, especially if they tie in to a national health campaign such as the Great American Smokeout. Many agencies with offices across the country rely on volunteer employees to coordinate and communicate health promotion activities. Your agency should ensure that volunteers have the skill, qualifications, and knowledge to deliver health activities.

### **Federal Occupational Health**

Many agencies use the services of Federal Occupational Health (FOH) of the U.S. Public Health Service. FOH can provide clinical services, environmental health services, on-site health clinics, wellness/fitness centers, and employee assistance programs to Federal agencies via interagency agreements. Call 1-800-457-9808.

### **Non-Profit Employee Organization**

In many agencies, employees form non-profit employee organizations such as a recreation association or an employee board to manage fitness facilities or administer health activities. An employee organization is comprised of interested employees who deliver organized activities and programs for their fellow employees in a structured format supported by company management. An employee organization may hire its own staff or use vendors to provide services. The organization collects fees from participating employees to cover the operating costs.

Your agency may provide Government resources to support employee organizations in accordance with appropriate General Services Administration regulations contained in Title 41 of the Code of Federal Regulations. The agency may pay for the rent and maintenance of

space, and the start-up costs of fitness facilities managed by employee organizations. If there are membership costs, your agency may arrange fee collection through payroll deduction. For more information on fee collection, see Chapter 2, Providing Physical Fitness Programs. See Appendix 4 for a sample management contract.

### **Checklist for Establishing an Employee Organization**

Select steering committee	Apply for tax-exempt status
Develop mission/goals	Establish budget and fee schedule
Conduct feasibility study	Write statement of work
Establish file Articles of Incorporation	Select contractor/staff
Write bylaws	Establish main and petty cash accounts
Write memorandum of understanding with agency	Collect user fee/membership applications
	Purchase insurance

### ***Related Guidance***

5 CFR Part 251 provides regulations governing agency relations with managerial, supervisory, professional, and other organizations that are not labor organizations. Section 251.101 (d) of 5 CFR Part 251 cautions that "an agency's consultation and communication with organizations representing Federal employees...may not take on the character of negotiations or consultations regarding conditions of employment of bargaining unit employees, which is reserved exclusively to labor organizations as provided for in Chapter 71 of title 5 of the U.S. Code..." (5 CFR 251 does not mandate the establishment of relationships with non-labor organizations, other than supervisory/managerial associations.)

### **Q: Do We Need Special Facilities to Provide Employee Health Programs?**

Employee health programs and activities require different types of space and facilities. Agencies may use existing space for educational seminars, meetings, health assessments, or a video/health education library, for example. Your agency is authorized to establish on-site health and fitness facilities and health units. The General Services Administration provides or arranges for space and equipment for EAPs, health units, and fitness facilities in Federally owned and leased buildings.

### **Health and Fitness Facilities**

Your agency is authorized to establish an on-site fitness facility for its employees for physical fitness activities, comprehensive health education and intervention activities, as well as health screenings. For more information about on-site facilities, see Chapter 2, Providing Physical Fitness Programs.

### **Health Units**

Since 1946, the health unit has been the most common site for providing health services to Federal employees. A health unit or occupational health center (OHC) is a convenient place to provide and coordinate comprehensive health services. Providing services at or near the workplace minimizes employees' time away from work and enhances productivity.

Depending on the size and needs of the agency(s) served, your agency may provide full-or part-time health services. Smaller agencies within a building or geographic locality may share space and/or services or have access to a nearby off-site health center.

Coordinate the design and plans for a new OHC in Government owned or leased space with GSA regional offices. Federal Occupational Health can also help review space, supplies, and equipment needs based on your agency's population and services.

Your agency or vendor may manage the ongoing operations of the OHC which may be staffed with contracted health professionals. An occupational health registered nurse is recommended, however, occupational health physicians, physician's assistants, nurse practitioners, licensed practical nurses, and trained technicians may all be appropriate depending on the size, scope, and complexity of the services required.

Consider the OHC when developing any agency employee health program plan. The OHC staff should work in conjunction with your agency's on-site fitness facility, employee assistance counselors, and health and safety professionals. The OHC and its staff can play a pivotal role in the effectiveness and success of your agency's employee health services program.

### **For Further Information**

Call Federal Occupational Health Customer Assistance at 800-457-9808. FOH has published Standards & Criteria for the Development of Comprehensive Occupational Health Programs.

### **Q: What are Key Elements of a Successful Employee Health Program?**

There are many excellent resource books on developing successful employee health programs. Most strategies can apply in general to most worksites. Federal employee health programs have evolved for many years and have unique challenges.

Successful Federal programs have firmly planted roots and have a plan to manage ongoing changes in program needs and management support. Consider these strategies:

- Integrate with other agency programs to provide streamlined coordinated services. Some agencies combine their employee health, employee assistance, and work/life programs under one division.
- Update your program to meet the current health needs and interests of employees and the agency. For example, during downsizing, employees may be more in need of stress management, humor therapy, and physical fitness than cholesterol screenings.
- Look at more effective ways to deliver services. If employees are too busy to visit your health facility, bring programs and information to them via computer technology.
- Focus on quality over quantity.
- Continue to evaluate your programs and eliminate ineffective or costly programs.
- Look for ways to share costs with employees. Many Federal fitness centers have survived ongoing budget cuts because they are funded through employee membership fees.

### **Key Elements of Successful Programs**

A needs assessment  
Specific and realistic goals and objectives  
Appropriate interventions and activities  
Compatibility with organization mission  
Commitment from top management  
A program champion

Leadership from well-qualified health professionals  
Employee participation in program design and implementation  
Respect and confidentiality  
Effective marketing  
Program identification  
Creative, Innovative, fun  
Convenient and accessible

Appropriate resources  
Organizational policies that support healthy lifestyles  
Communication among departments  
Integration of program into the organization's administrative structure

Targeting of at-risk populations  
Identifying special populations  
Quality assurance  
On-going evaluation

### **Q: What Kinds of Work and Leave Flexibilities May Agencies Provide to Employees to Participate in Employee Health Programs?**

The Federal personnel system gives employees considerable flexibility in scheduling their hours of work and taking time off for routine medical examinations and preventive screenings. Agencies should review policies and make maximum use of existing work schedules to encourage employees to take advantage of preventive health services. The following are some examples of the work and leave flexibilities available to employees:

#### **Alternative Work Schedules**

Your agency may establish flexible or compressed work schedules, collectively referred to as "alternative work schedules." Alternative work schedules allow for a variety of working arrangements tailored to individual employee needs.

#### **Annual Leave**

##### **Excused Absence**

Most employees accrue 13, 20, or 26 days of annual leave each year, depending on years of service (which accumulates to a maximum of 240 hours each year). Your agency may grant a limited amount of excused absence to employees to participate in agency sponsored preventive health activities, such as health fairs, mobile health van screenings, and smoking cessation and stress reduction classes.

##### **Sick Leave**

Most employees accrue 13 days of sick leave each year without regard to length of service. This sick leave accumulates without limit in succeeding years.

##### **Advance Leave**

Supervisors may advance annual and/or sick leave to employees who do not have available paid leave for health services not directly sponsored by the agency. Supervisors may also advance annual leave to employees for any additional examinations and follow-up treatments. When an employee needs additional medical attention, e.g., for a serious health condition identified by a screening process, two additional leave programs are available.

#### **The Family and Medical Leave Act of 1993 (FMLA)**

Under the FMLA, an employee is entitled to a total of 12 work weeks of unpaid leave during any 12-month period for certain need, including an employee's serious health condition and screenings for such conditions. FMLA leave may be used intermittently and is in addition to other paid time off available to an employee. Employees may substitute sick or annual leave for unpaid leave under the FMLA.

## **Leave Sharing**

Employees who experience a medical emergency identified through a preventive health screening and who exhaust their available paid leave may receive donated annual leave from other Federal employees through the voluntary leave transfer and leave bank programs. Employees may not use donated annual leave to participate in employee health programs.

## Chapter 2

# Providing Physical Fitness Programs

### **Q: What is a Physical Fitness Program?**

Under 5 U.S.C. §7901, agencies may establish and operate physical fitness programs and facilities designed to promote and maintain employee health. Fitness programs should be designed to improve or maintain an employee's cardiovascular endurance, muscular strength and endurance, flexibility, and body composition.

Fitness programs may include:

- Walking clubs/events
- Aerobic exercise classes
- Weight lifting instruction
- Stretching classes
- Fun runs
- Lectures on safe participation
- Health education on physical exercise
- Fitness assessments.

Establish and administer physical fitness programs as an integral part of your agency's employee health services program. Your agency may operate on-site fitness facilities or use the services of a private facility. It is possible to offer fitness activities without special facilities. In addition to providing programs and facilities, your agency may encourage an active lifestyle by issuing policies supporting flexible work schedules and creating environments that encourage active and healthy lifestyles (e.g., providing showers and locker rooms, bike racks, running maps, and healthy vending machine choices).

### **For Further Reading**

In 2002, The Surgeon General's Call to Action to Prevent and Decrease Overweight and Obesity called on all sectors of society, including worksites, to take part in the call to action. The Surgeon General's Report on Physical Activity and Health, July 1996, states that a moderate amount of physical activity on a regular basis can improve health, and asks employers to provide supportive workplace environments and policies that help employees become more physically active. Visit the web site containing a compilation of the Surgeon General's reports at <http://sgreports.nlm.nih.gov> or call 888-231-6405.

### **Checklist for Establishing Physical Fitness Programs**

- Determine the need for and extent of the programs and facilities*
- Identify available resources*
- Establish a statement of goals and objectives*
- Provide management support*
- Determine the extent of programs and facilities and the method(s) for providing them*
- Assure that programs are safe, appropriate, and meet legal and ethical requirements*
- Select qualified personnel*
- Publicize the availability of programs*
- Plan for and coordinate the design of new health/fitness facilities in Government owned and leased space with appropriate GSA regional offices*
- Make programs convenient and available to all employees*
- Develop an ongoing evaluation process*

*Negotiate or consult with unions, as appropriate*  
*Understand and reduce the risk of liability associated with physical fitness programs*  
*Consider the Federal tax rules governing providing fitness programs and facilities*

## **Q: Who Pays for Physical Fitness Programs?**

Physical fitness programs may be:

- Fully funded by your agency
- Funded by a combination of employees' fees and agency funding
- Fully funded by employee contributions or fees.

The extent to which your agency pays for fitness programs depends on budget, employee needs, and agency mission. Many agencies are exploring ways to share the cost with the employee. For example, many Federal fitness facilities are employee-funded, but agencies typically pay for the rent of space and start-up costs.

## **Q: How May We Collect Fees from Employees?**

Employee contributions may be a significant funding source.

- They justify the initial establishment of new programs and facilities.
- They maintain existing programs and facilities.
- They ensure employees' commitment to regular participation.
- They increase the likelihood of public support for such programs.

Agencies may collect fees directly from employees under specified conditions, or arrange for fee collection by third parties, such as employee organizations or contractors.

Generally, any fees collected by a Federal agency from its employees must be deposited into miscellaneous receipts of the U.S. Treasury, unless you have statutory authority to do otherwise (31 U.S.C. §3302). Such fees, may not ordinarily be used to directly reimburse the costs of health facilities or programs.

### **Employee Fees Can Support Program Costs When Collected By a Contractor**

Your agency may use the fees collected from employees to directly support program costs in the following situations:

Contractors who provide physical fitness programs may collect employee fees directly or make arrangements with an employee organization to collect fees from employees. Sometimes contractors are willing to split costs between the agency and participating employees. Through the contracting process, the agency and contractor determine the total cost. The agency then pays a predetermined portion. The contractor is responsible for collecting fees from the employees to cover the remaining cost.

### **When Collected By an Employee Organization**

Many Federal fitness facilities are managed by employee organizations (such as a non-profit employee board or a recreation association). The employee organization manages the fitness facility via a contractor or its own staff. The organization charges the employee a membership fee to cover operating costs. Under this arrangement, the agency may collect employee fees through payroll deduction on behalf of the employee organization (5 U.S.C. §5525, Allotment and Assignment of Pay).

## **When Authorized by Congress**

Some agencies, through the appropriations process, request special authority to collect fees directly from employees to cover the costs of their fitness centers.

## **When Using GSA Space and Services**

If your fitness facility is located in GSA space, your agency pays for the use of the space and services such as electricity. Your agency may collect fees directly from employees to reimburse your agency's appropriated fund established for the cost of space and services (40 U.S.C. §490 (k)). Other costs typically associated with physical fitness facilities, such as staff and equipment, are not directly reimbursable under this authority.

The Administrator of the General Services Administration and the Director of the Office of Management and Budget must approve the rates an agency charges its employees. Any fees collected in excess of the actual cost for the space and services must be deposited into miscellaneous receipts of the U.S. Treasury.

## **Determining Employee Contributions**

When determining costs to employees, consider:

- The total cost of implementing, administering, and maintaining facilities and programs.
- The agency mission and employee duties. For example, your agency may choose not to collect employee contributions from employees whose positions require them to meet job-related medical standards or physical requirements.
- Financial limitations of employees at lower income levels. The size of the employee contribution should not limit or prohibit participation of employees at lower income levels. Your agency could finance the cost of the services to the point where the contribution is reasonable for all employees.

## **Q: May We Grant Excused Absence for Participation in Physical Fitness Activities?**

Each department or agency has discretion to excuse employees from their duties without loss of pay or charge to leave. Excused absence should be limited to those situations in which the employee's absence, in the department's or agency's determination, is not specifically prohibited by law and satisfies one or more of the following criteria:

- The absence is directly related to the department or agency's mission.
- The absence is officially sponsored or sanctioned by the head of the department or agency.
- The absence will clearly enhance the professional development or skills of the employee in his or her current position.
- The absence is brief and is determined to be in the interest of the agency.

Ultimately, it is the responsibility of each department or agency head to balance support for employees' participation in physical fitness activities with employees' work requirements and efficient and effective agency operations. Your agency should review its internal guidance on excused absence and applicable collective bargaining agreements.

Examples of situations that may warrant short periods of excused absence include participation in officially sponsored and administered physical fitness programs, health education classes, medical screenings, or health fairs.

Consider the following recommendations for establishing employee participation policies:

### **Encourage Fitness**

- Publish policies that encourage management to support flexible work schedules to help employees find time to exercise.
- Visibly support fitness by authorizing time off for special agency-sponsored physical activity events such as a fitness facility orientation, an agency fun-run, or fitness month activities.
- Schedule health and fitness activities to the extent possible immediately before and after working hours and during the lunch period. Lunch breaks may be made longer for employees on flexible work schedules.
- Make showers and locker rooms available at the worksite, as well as bike racks and physical activity educational materials.
- Issue a health and fitness newsletter for employees.
- Sponsor fitness challenges, incentives, and competitions.
- Form an employee health committee and/or work with the union to identify employee health needs and interests.

### **Make Employees Responsible**

The employee may use non-duty time, including lunch periods, when participating in health and fitness activities of long-term duration or that have an indefinite ending date, such as a regular exercise program.

### **Encourage Supervisors**

Your agency should encourage supervisors to accommodate, when possible, employee requests for flexible work schedules and annual leave in order to participate in health and fitness activities. Often employees may use the flexibilities of an agency's alternative work schedule program to find convenient non-duty time for this purpose.

### **Q: May We Provide an On-site Federal Fitness Facility?**

Your agency may provide an on-site fitness facility for its employees. The agency fitness facility might offer a variety of services:

- Exercise equipment
- Fitness activities
- Health screenings
- Health education
- Intervention programs.

There are a variety of options for administering the facility. Your facility may be:

- Agency operated
- Provided by an employee organization
- Provided through a consortia or interagency agreement.

When developing plans for your fitness facility, carefully consider health industry recommendations on staffing, facility design, equipment selection and maintenance, and safety. The American College for Sports Medicine is a good source for written standards and guidelines and several of their resources are referenced in this handbook.

## **Q: How Do We Staff an On-site Federal Fitness Facility?**

The success or failure of a health and fitness program may hinge upon the competence and friendliness of the staff, including having an adequate number of trained staff. Surveys indicate that quality leadership, coupled with a staff that stays current through ongoing training, rank high in terms of continued participation.

Fitness facility staff might include:

- A Fitness Director or Program Manager
- A Health Fitness Specialist or Assistant Manager
- Group Exercise Class Leaders
- Additional staff to provide special services such as health education classes.

### **Fitness Director/Program Manager**

Sample duties of the staff might include the following:

- Manage day-to-day operations
- Develop, plan, and implement health/fitness programs
- Train, supervise, and schedule staff
- Interact with contract liaison or board of directors
- Account for membership fee collection, billing, payroll deduction tracking, and record keeping and collection
- Supervise facility and equipment maintenance
- Recruit and retain members
- Conduct fitness assessments, individual programs, and behavioral counseling

### **Health Fitness Specialist/Assistant Manager**

- Help promote and administer all intervention programs and health education classes
- Assist in overall administration of the program
- Lead a variety of fitness classes
- Conduct fitness testing, individual programs, and behavioral counseling
- Market and promote the program through newsletters, calendars, special events, etc.

## **Q: How Do We Design an On-site Federal Fitness Facility?**

Planning a fitness facility requires time, research, and careful attention to detail. Consult Federal, State, or local regulations. Compare your facility design and planned services to the standards outlined in the American College of Sports Medicine's Health/Fitness Facility Standards and Guidelines, Second Edition. Visit other facilities to talk with the staff and members. Your agency might use a fitness facility management company to design the facility or to get expert advice.

The General Services Administration provides or arranges for adequate space and equipment for EAPs, health units, and fitness facilities in Federally owned and leased buildings. Work with appropriate GSA regional offices to conduct employee surveys and to design and build programs and facilities. Your agency is responsible for purchasing the exercise equipment, lockers, and nonstandard interior finishes. See Appendix 5 for other references regarding assignment and utilization of space and how the requirements apply to fitness centers in GSA-controlled space. Also consult GSA's Customer Guide to Real Property, a product of the Public Buildings Service. Call 202-501-1100.

A comprehensive facility will include:

- Sign-in/Control Desk
- Office/Testing Area/Storage
- Cardiovascular Equipment Area
- Strength Training Area
- Group Exercise Class Area
- Locker Rooms

### **Q: How Might An Agency Purchase Equipment for an On-site Federal Fitness Facility?**

Your agency may purchase equipment for your fitness facility. Survey employees to determine preferences.

#### **Equipment Quality**

Purchase equipment designed for "club use." The equipment must stand up well to wear and tear and heavy use. There are many well-recognized equipment manufacturers. The exercise equipment industry is rapidly growing, so the "top of the line" equipment may change from year to year. Consult with other Federal facilities or a fitness management company to narrow your choices.

#### **Equipment Cost**

Consider equipment cost. Specifically, request GSA pricing when comparison-shopping. There are other options to paying in full, such as leasing equipment or purchasing used equipment from other facilities listed on Government surplus lists.

#### **Equipment Maintenance**

Equipment that looks new and functions properly holds its value and is a major factor in keeping members. Even well built equipment requires attention on a regular basis. Clean and maintain the equipment routinely to reduce the number of repairs and extend the life of the machinery. Consider using the services of an equipment maintenance company. This is especially convenient for cardiovascular equipment that requires frequent replacements of parts.

#### **Equipment Wish List**

- Cardiovascular Equipment
  - Treadmills
  - Stair Climbers
  - Stationary Cycles
  - Upper Body Ergometers
  - Cross Country Ski Machines
  - Rowers

#### **Strength Training Stations for Gluteal Muscles**

- Quadriceps
- Hamstrings
- Calves
- Upper Back
- Lower Back
- Chest
- Shoulders

Biceps/Triceps  
Abdominals

### **Free Weight Equipment**

Upright Bench  
Flat and Incline Benches with Bars and Plates  
Dumbbells Ranging from 3-80 Pounds  
One Small, Medium and Large Lifting Belt  
Smith Machine (Alternative to a Squat Rack)  
Dip/Pull-Up Station (Or Assisted Dip/Pull-Up Station)

### **Exercise Class Equipment**

Individual Mats for Stretching and Toning Exercises  
Dumbbells Ranging from 3-20 Pounds  
Elastic Bands or Surgical Tubing For Strength Exercises  
Benches or Steps

### **Q: How Do We Reduce the Chances of Injury at Our On-site Federal Fitness Facility?**

Despite precautions, accidents can occur. The majority of accidents can be prevented through adequate supervision, staff training, appropriate screening procedures, and proper facility and equipment upkeep.

Your agency must be prepared to respond in a responsible and timely manner. Develop safety policies and a comprehensive emergency plan. Document, post, and practice emergency response procedures.

Use the following important health industry strategies for safe fitness facility operation:

- Provide adequate supervision at all times using competent and professionally trained and certified staff with current CPR certification. Have staff inspect locker rooms on a regular basis throughout hours of operation.
- Require pre-activity screening (e.g., a Physical Activity Readiness Questionnaire (PAR-Q), or health history/medical questionnaire) to identify individuals who need medical clearance to participate in fitness activities and to identify risks for certain activities.
- Provide a telephone or another emergency calling system adjacent to physical activity areas. Having a cordless phone at the facility is particularly important for on-site injuries or medical incidents that require phone consultation with emergency medical response personnel. A cordless phone allows the on-site responder to stay with the victim while getting phone assistance.
- Develop a comprehensive emergency plan. Post emergency procedures with emergency contact numbers. Develop the plan in conjunction with building security and the health unit.
- Conduct emergency practice drills with staff at least twice a year. Do all that is necessary to ensure that staff knows the emergency procedures.
- Use nationally recognized tests and procedures when providing screenings, evaluations, and fitness testing. Professionally trained or certified staff should administer fitness tests before prescribing exercise activities.
- Use informed consent statements to advise participants of the benefits and risks of participation, testing, and physical activity.
- Distribute fitness facility rules and regulations to participants.

- Provide a fitness facility orientation and give detailed instructions on how to safely use the facility and equipment.
- Sign in participants at each visit and check for expired clearances or lapses in attendance.
- Post manufacturer's instructions for all equipment.
- Post warning signs that identify dangerous physical symptoms to watch for during exercise (nausea, dizziness, and pain in chest, for example) and for relevant risks associated with use of specific equipment.
- Provide clocks and target heart rates or perceived exertion charts so that participants can monitor their exercise levels.
- Provide appropriate and safe equipment and facility layout.
- Post warnings for any unsafe conditions (e.g., wet floor, high heat index).
- Conduct classes at appropriate levels for participants. Instructors should be CPR certified.
- Make available basic first aid supplies.
- Report accidents.
- Ensure and document ongoing inspection, maintenance, and repair of the fitness facility and equipment. Remove any broken or unsafe equipment.
- Incorporate a cleaning and maintenance system that ensures a sanitary and safe environment.

### **For Further Reading**

1. American College of Sports Medicine Health/Fitness Facility Standards and Guidelines, Second Edition, Human Kinetics Books, 1-800-747-4457.
2. Standards and Criteria for the Development and Evaluation of Comprehensive Federal Physical Fitness Programs, March 1990, U.S. Public Health Service, Division of Federal Occupational Health.

### **Q: How May We Use Off-Site Fitness Facilities?**

Providing health and fitness activities via a private facility may be part of an agency's bona fide preventive program authorized under 5 U.S.C. §7901.

Agencies, in exercising this authority to purchase access to private health and fitness facilities, should use the following criteria in making the determination:

- Providing access to a private fitness facility meets agency health services program objectives and can be carefully monitored as part of a bona fide preventive health program.
- Providing access to private facilities is more cost effective than providing an on-site fitness facility.
- Coordinating with other Federal agencies in the area to provide a multi-agency operated fitness facility is not possible.
- Other possible resources (such as other Federal fitness facilities) or typically lower cost facilities (such as community centers or universities) were identified, considered, and determined to be unavailable or inappropriate.

### **Facility Criteria**

Consider the following criteria when selecting a particular private health and fitness facility.

The private fitness facility is the most appropriate, convenient, and cost effective private fitness facility available in the geographical area.

1. The facility is close to the workplace with hours during the business day.

The facility provides bona fide preventive health program services and activities, such as:

- Screening for health risks
- Cardiovascular endurance equipment and activities
- Muscular strength and endurance equipment and activities
- Flexibility equipment and activities
- Equipment orientations
- Fitness evaluations
- Exercise plans.

2. The facility takes appropriate precautions for reducing the risk of injury.

## **Purchasing Criteria**

**Consider the following recommendations for purchasing memberships.**

- Purchase the memberships in the name of the agency, not in the name of the individual employee.
- Follow Government procurement guidelines when contracting with private fitness facilities to provide access for employees.
- Choose basic membership packages (if there are such options) and avoid deluxe package options (e.g., spa privileges or activities that are purely recreational and do not contribute to a bona fide preventive health program).
- Monitor the facility and the employees' use of memberships.
- Be aware that health club memberships provided to employees might be considered a taxable fringe benefit.
- Become informed about the liability issues reviewed in this chapter.

## **Related Guidance**

1. The Comptroller General's Decision, B-240371, January 18, 1991, indicates that 5 U.S.C. §7901 and its implementing regulations authorize the use of appropriated funds to provide employees access to a private fitness center's exercise facilities. The prohibition in 5 U.S.C. §5946 against the use of appropriated funds to pay membership dues of Federal employees does not prohibit a Federal agency from using appropriated funds to purchase access for its employees to a private fitness center's exercise facilities. See Appendix 6.
2. Health club memberships for employees may be considered a taxable fringe benefit. For further clarification, check with your Office of General Counsel or with the Internal Revenue Service, Office of the Chief Counsel, Tax Exempt and Government Entities Employment Tax Branch 2 at 202-622-6040.

## **Q: What Are the Liability Risks Associated with Physical Fitness Programs?**

While the benefits of providing health and fitness activities outweigh the risks, your agency should be aware of liability issues. Persons sustaining personal injury may bring claims against the U.S. Government under two Federal Statutes: the Federal Employees' Compensation Act (FECA) and the Federal Tort Claims Act.

### **The Federal Employees' Compensation Act (FECA)**

FECA, as amended, 5 U.S.C. §8101 et seq., provides for the payment of workers' compensation benefits to Federal employees sustaining injuries while in the performance of

their duties. The Department of Labor has established guidelines defining the scope of FECA's coverage for employees injured while engaging in physical fitness activities.

1. An employee injured while engaging in physical fitness activities has the right to file a claim for benefits under FECA.
2. An employee who is injured while engaging in an activity that is specifically identified in that employee's Physical Fitness Program (PFP) is covered for all FECA benefits. A PFP is an agency initiated and structured program that allows employees to participate in specified physical exercise activities and includes medical screening. Fitness coordinators oversee exercise activities and review exercise logs.
3. For an employee who is injured while engaging in a physical fitness activity or recreational activity that is not part of a PFP, coverage is considered on a case-by-case basis, using claims information to determine if one of the following three criteria has been met:
  - The activity occurs on the agency's premises during the employee's normal working hours, unless specifically barred by the agency.
  - The employing agency explicitly or implicitly requires the employee to participate, or makes the activity within the employee's scope of employment. For example, if an agency required that an employee participate in a mandatory fitness evaluation, that employee, if injured during the evaluation, would be covered.
  - The employing agency derives substantial direct benefit from the employee's participation in the activity, above and beyond the benefits of morale and good health. An example of a case covered is a Federal employee who is injured playing a softball game with an outside organization that worked on some cooperative projects with the employing agency. The employee's injury is covered because of a combination of factors, one of which was that the employee's participation in the activity established a closer professional relationship with the outside organization and substantially benefited the agency.

FECA provides the exclusive remedy against the U.S. Government for Federal employees injured in the course of their employment. If an employee receives payment under FECA, he/she cannot bring suit against the U.S. Government under the Federal Tort Claims Act for death or disability arising out of Federal employment.

### **Federal Tort Claims Act as amended by the Federal Employees Liability Reform and Tort Compensation Act of 1988**

This Act provides individuals with an appropriate remedy against the U.S. Government for personal injury caused by the negligent or wrongful acts of Federal employees.

Under this Act a Federal employee can no longer be sued personally for negligent or wrongful acts resulting in personal injury, provided that the employee was acting within the scope of his/her office or employment. Instead, the U.S. Government will represent the employee and serve as the defendant.

However, the Act does not protect the Federal employee if his/her conduct is illegal, in violation of the Constitution, or outside the scope of his/her employment. For these reasons, employees responsible for administering physical fitness programs may want to consider professional liability insurance as a precaution.

Injured parties not covered under the Federal Employees' Compensation Act, who are injured by such conduct of Federal employees, may bring suit against the U.S. Government under this Act.

In some cases, injuries will result in suits by the injured party against non-Federal groups (e.g., contractors, employee organizations that are responsible for providing physical fitness programs, fitness equipment vendors, and private health clubs). When contracting with vendors, agencies should require that the vendor carry general liability insurance.

### **The Use of Waivers**

Use waivers and informed consent forms for participation in agency sponsored fitness facilities or events. The general thought on the use of waivers is that they do not absolve an agency from liability for its negligence, but rather they:

- Outline the terms of the event
- Inform the participant of the risks
- Limit liability exposure.

Check with your General Counsel to determine the need for a waiver or other screening forms and to ensure that it conforms to the appropriate State and local laws governing such forms.

# Chapter 3

## Administering Employee Assistance Programs

### **Q: What is an Employee Assistance Program (EAP)?**

At some time in their careers, many employees will experience a problem that will affect a major aspect of their lives. Examples of these are:

- Alcoholism
- Drug abuse
- Divorce
- The death of a loved one
- Bankruptcy
- Some other family or workplace crisis.

The problem might not be the employee's concern; it might be the problem of a family member or a close friend. No matter where the problem originates, these problems can affect an employee's job performance or conduct.

The EAP is a voluntary, work-based program that provides cost-free and confidential assessment, short-term counseling, referral, and follow-up services to employees who have personal and/or work-related problems that may affect attendance, work performance, and/or conduct. Every agency has an EAP which has a goal of restoring valuable employees to full productivity.

Below are definitions for some common EAP terms.

#### **Alcoholism/Drug Addiction**

A chronic and progressive disease, characterized by the loss of control over the use of alcohol and/or drugs, that adversely affects a person's physical, mental, emotional, and social capabilities, interpersonal relationships, and/or occupational, and economic functioning.

#### **Alcohol/Drug Abuse**

The excessive use of alcohol or drugs in a manner that may impair a person's physical, mental, emotional, interpersonal, occupational, and economic functioning.

#### **Self-Initiated Referral**

An employee who voluntarily seeks EAP assistance or who seeks EAP assistance at the recommendation of a union representative, co-worker, friend, family member, nurse, etc.

#### **Management-Initiated Referral**

An employee who is formally referred to the EAP by a supervisor, usually as a result of a performance or conduct deficiency, or an employee who is identified as using or abusing drugs in accordance with Executive Order 12564.

#### **Self-Identification**

An employee who admits to drug abuse to his or her supervisor or to the EAP and seeks rehabilitative assistance from the agency EAP in accordance with Executive Order 12564 prior to being identified through other means.

## **Firm Choice**

A clear warning to an employee who has raised alcohol and/or drug use in connection with a specific performance, conduct, or leave use problem. The employee must make a choice between accepting treatment for the alcohol and/or drug problem and improving job performance or facing disciplinary action, up to and including removal.

## **Last Chance Agreement**

An agreement reached between the employee and the employer that holds in abeyance the an employee's disciplinary action, when certain conditions are met.

## **Emotional/ Behavioral Problems**

Problems, such as financial, family, marital issues, etc., that may have an adverse impact on employee performance, conduct, or reliability.

## **Community Resources**

Organizations such as treatment and rehabilitation facilities and programs that exist in the community, such as Alcoholics Anonymous and other self-help groups.

## **Q: What Are the Legal Requirements for EAPs?**

Counseling programs for Federal civilian employees who have substance abuse problems are required by:

Sec. 201 of Public Law 91-616, 84 Stat. 1849, as amended and transferred to Sec. 520 of the Public Health Services Act by Sec. 2(b)(13) of Public Law 98-24 (42 U.S.C. §290dd-1),

Sec. 413 of Public Law 92-255, 88 Stat. 84, as amended and transferred to Sec. 525 of the Public Health Services Act by Sec. 2(b)(16)(a) of Public Law 96-24 (42 U.S.C. §290ee-1), and Sec. 7361 and Sec. 7362 of Public Law 99-570.

Public Law 99-570 (5 U.S.C. §§7361 and 7362), The Federal Employee Substance Abuse Education and Treatment Act of 1986, and title 5 Code of Federal Regulations (CFR) Part 792, requires Federal agencies to establish appropriate prevention, treatment, and rehabilitative programs and services for alcohol and drug abuse problems for Federal civilian employees (see Appendix 1).

Public Laws 96-180 and 96-181 authorize your agency to extend counseling services, to the extent feasible, to family members of employees who have alcohol and drug problems, and to employees with family members who have substance abuse problems.

Public Law 79-658 authorizes the head of agency to establish health services programs for employees, also forms the basis for expanding counseling programs from those dealing solely with substance abuse to broad range programs which provide counseling for other personal problems, e.g., family, financial, marital, etc. (see Appendix 2).

Executive Order 12564 requires your agency to establish a drug-free Federal workplace program, including an EAP as an essential element in achieving a drug-free workforce. Your agency must refer all employees found to use illegal drugs to the EAP for assessment, counseling, and referral for appropriate treatment or rehabilitation.

## **Q: What Are the Agency's Responsibilities?**

When establishing an EAP, your agency should:

- Provide top management support and endorsement for EAPs
- Develop agency policy on EAP goals and training
- Establish a statement of goals and objectives
- Determine the extent of services to provide through the EAP and the administrative options
- Identify available community resources
- Select qualified personnel
- Negotiate or consult with unions, as appropriate to provide EAP services to bargaining unit employees\*
- Publicize the EAP through internal memos, newsletters, posters, etc.
- Encourage employees to use the EAP by making services convenient and available to employees
- Develop an ongoing evaluation process

*Some aspects of employee health and assistance programs are negotiable conditions of employment of bargaining unit employees and, as such, may not be unilaterally established or changed to the extent they apply to bargaining unit employees.*

## **Q: What Services Can an EAP Provide?**

In addition to alcohol and drug abuse counseling, your agency may offer counseling and referral services for a variety of problems through the EAPs, such as mental health, emotional, family, financial, elder and dependent care, legal difficulties, etc.

The EAP also plays a key role in educating employees on a variety of health and assistance topics such as HIV/AIDS, money management, parenting, caring for aging parents, stress management, and selecting quality child care.

The basic services of the EAP include:

- Confidential, free, short-term counseling to identify and assess problem(s) and to help employees in problem solving.
- Referral, where appropriate, to a community service or professional resource that provides treatment and/or rehabilitation. With the exception of illness or injury directly resulting from employment, medical care and treatment are personal to the employee and, therefore, payment may not be made from appropriated funds unless provided for in a contract of employment or by statute or by regulation.
- Follow-up services to help an employee readjust to his or her job during and after treatment, e.g., back-to-work conferences.
- Training sessions for managers and supervisors on handling work-related problems that may be related to substance abuse or other personal, and/or health-related problems.
- Orientation and educational programs to promote the services of the EAP.
- Briefings to educate management and union officials on the role of EAPs.

In addition, the EAP can be extremely important in:

- Preventing and intervening in workplace violence incidents
- Delivering critical incident stress debriefings
- Providing assistance to management and employees during agency restructuring.

## **Q: How Are EAPs Administered?**

The EAP may be made part of the agency's overall employee health services program. It may be integrated organizationally and functionally to enhance employee awareness and utilization of available services and to efficiently deliver health services to employees.

Your agency might set up an "in-house" program using agency staff, contract for EAP services or use a combination of both options. Contract and in-house EAPs provide the same basic services.

### **Agency In-House Programs**

Staff your in-house program with agency personnel on a full-time, part-time, or collateral-duty basis. Your agency may hire a full-time EAP program administrator, coordinator, and counselors to operate the program.

### **Contract Programs**

The majority of the EAPs are operated through contracts or interagency agreements with other organizations. These mechanisms can be cost effective when the programs are tailored to the specific needs of the agency.

Contract arrangements are often used to provide EAP services to employees working in remote locations. Contract arrangements also work in small agency installations where in-house EAPs would not be possible because the agency lacks in-house expertise or because the workforce population is not large enough to justify employing an in-house EAP staff.

In addition, your agency might choose to provide EAP services to your employees through interagency agreements with the Division of Federal Occupational Health (FOH), DHHS. FOH operates many EAPs for Federal agencies throughout the country.

Contracting with outside organizations or providers for EAP services is a viable option for many agencies. Your agency might operate the EAPs either through a single agency contract or as part of a multi-agency contract. Larger agencies use a combination of these options.

### **Cooperative Programs**

Agencies in the same geographical area may determine that the only viable option for having an EAP is to combine their resources in a multi-agency contract. This is called a Cooperative Interagency Employee Assistance Program, or "Consortium."

Typically, this process involves one agency agreeing to become the lead agency for the consortium, signing a contract with an outside organization for the counseling and referral services, then monitoring how the contract is being performed. All of the participating agencies, in return, share the expenses of the contract, usually on a per capita basis, through an interagency agreement. FOH manages most EAPs through this type of arrangement and can act as the lead through an interagency agreement.

### **Related Guidance**

The Economy Act, 31 U.S.C. §1535, gives agencies authority to enter into interagency agreements with other Federal agencies.

## **Q: How Should We Staff the EAP?**

Each agency determines its needs for EAP personnel, depending on the program's scope. The following briefly describes the types of activities EAPs perform. In some locations, one individual may perform all these duties.

### **EAP Administrator**

The EAP administrator is responsible for developing, implementing, and evaluating the agency's EAP. The administrator provides policy guidance and assistance to EAPs in the field on the interpretation of laws and regulations, EAP statistical reports, confidentiality of EAP records, and other technical issues.

### **EAP Coordinator**

Coordinators are responsible for implementing and operating the EAP within an agency component, such as a headquarters office or at a field installation. Your agency may need more than one coordinator depending on the size of the agency component.

### **EAP Counselor**

EAP counselors serve as the initial point of contact for employees using the EAP. They provide the direct day-to-day services, such as, assessment, short-term counseling, referral and follow-up to help employees readjust to the job during or after treatment.

In addition, EAP counselors often help supervisors and employees cope with traumatic events, such as the death of a co-worker, natural disaster or man-made disasters, or accidents. Counselors also conduct educational activities on a variety of issues such as substance abuse, stress management, financial management, HIV/AIDS, and balancing work and family responsibilities.

## **Q: What Types of Qualifications Should EAP Staff Possess?**

Your agency should require that in-house program staff or the contract counseling staff possess specific education and training (e.g., Masters degree in Social Work, Psychology, etc.). More specifically, EAP personnel should possess the qualifications, education, and training to be able to:

- Implement the agency's EAP policy and program effectively, including programs for counseling and assisting employees with alcohol and drug abuse problems
- Interpret and apply the laws, regulations, and procedures that govern Federal EAPs and related programs and services
- Determine and provide appropriate training to supervisors, employees, and union officials, as well as other activities needed to educate and inform the workforce about drugs and alcohol and the dangers of substance abuse
- Develop and maintain counseling, referral, and follow-up capability
- Evaluate the effectiveness of the EAP program and report the findings to management
- Counsel and communicate effectively with employees, supervisors, and managers concerning substance abuse, its symptoms and consequences
- Identify and maintain liaison with community resources for treatment and rehabilitation of substance abusers
- Understand drug and alcohol treatment and rehabilitation insurance coverage available to employees through the Federal Employees Health Benefits Program (FEHBP)
- Distinguish the occasional user from the addicted user and suggesting the appropriate treatment based on that information

- Help employees maintain abstinence from future substance abuse.

### **Q: How Should We Evaluate Our EAP?**

Agencies might wish to establish criteria for evaluating their EAP. Here are some common methods to evaluate the visibility and effectiveness of the agency EAP.

- Use steering committees to monitor whether the EAP is meeting written objectives
- Use supervisory and employee questionnaires and interviews to assess utilization, program availability and accessibility, satisfaction with program services, and overall program effectiveness
- Review employee attendance records, accident records, disciplinary and performance based actions, number and type of grievances, etc., to assess program outcomes
- Conduct peer panel reviews of EAP service quality
- Conduct a limited cost benefit analysis
- Conduct personnel management system reviews that cover EAP services.

Use the results of agency evaluation efforts to make improvements to EAP services. The following are examples of actions an agency might decide to make based on the results of evaluations:

- Improve or increase supervisory/management training
- Increase informal EAP sponsored sessions (e.g., "brown bag" lunch sessions) on special topics, such as "parenting," "elder care," and "HIV/AIDS," for employees
- Increase efforts to publicize and promote EAP services to agency employees
- Increase efforts to improve linkages between the EAP and various parts of the organization, such as the health unit, the safety office, employee and labor relations office, and the union
- Intensify efforts to improve the levels of privacy and confidentiality associated with EAP services
- Automate data and reports
- Monitor contract EAP personnel more closely

### **Program Evaluation Checklist**

#### Quality and Scope of Program.

Has the program established goals and objectives?

Is the program broad enough in scope to meet a variety of employee needs?

To what degree are employees, managers, and labor organizations involved?

Does the program have adequate budget/resources to offer substantive program activities?

#### Program Administration.

Has a program coordinator been assigned responsibilities for the agency's program?

What are the qualifications of the program staff?

Are records and patient's files kept in accordance with the confidentiality requirements of applicable laws and regulations?

#### Program Evaluation and Results.

What system is used to determine if the goals and objectives were met?

Are data collected on such key indicators as number of new cases seen by the EAP staff, the

percentage of those employees who were helped as a result of the assistance provided by the program, use of leave, etc.?

Other Significant Factors.

Does a policy statement exist?

Are the services of the EAP well publicized?

Are managers and supervisors briefed regularly on the program?

Do employee orientations contain information on program services?

**Q: Can the EAP Help with Employee Performance, Conduct, and Leave Difficulties?**

The EAP can be a valuable resource for supervisors and employees when personal problems adversely affect an employee's attendance, performance, or conduct. Supervisors should counsel employees with deficiencies in conduct or performance and offer appropriate assistance to prevent more serious problems.

Supervisors are responsible for making employees aware that certain behaviors will result in loss of pay or removal if not effectively addressed:

- Deficient job performance
- Misconduct
- Leave deficiencies

Supervisors are not expected to be skilled in medical diagnosis. Supervisors should not attempt to diagnose a physical and/or mental condition that may affect an employee's performance or conduct.

Instead, supervisors should be alert to a pattern of deficient or deteriorating performance and/or conduct. Such a pattern may suggest an underlying personal or medical problem. In this case, the supervisor should let the employee know about the services of the EAP for personal counseling or to bring forward medical documentation.

Supervisors should request medical documentation only when they believe, to a reasonable extent and based on objective evidence, that an employee has a medical condition that:

- Impairs his or her ability to perform the essential functions of his or her job or
- Causes the employee to pose a direct threat to the health or safety of the employee or others.

**Steps For Supervisors**

- *Identify and document instances of less than fully successful performance, misconduct, or attendance problems.*
- *Obtain advice and assistance from the personnel office and/or EAP staff.*
- *Inform the employee of the free and confidential services provided by the EAP; and refer him or her to the EAP.*
- Consider carefully the employee's request for annual leave, sick leave, and leave without pay, changes in work schedule, and/or other means of resolving his/her job problem(s).
- *If an employee requests a reasonable accommodation, however vague, the agency must exercise the considerations recommended in providing a reasonable accommodation (check agency policy) as long as the employee is otherwise qualified.*

- *Provide the employee with positive feedback and encouragement when progress is made toward satisfactory performance, conduct, and/or leave use.*

### **Q: How Should Supervisors Deal with Employees Who Have Problems that Impact the Job?**

When supervisors suspect or recognize that the employee's performance or conduct deficiencies are caused or have been affected by substance abuse or other personal problem, the following actions are recommended:

1. Identify and document instances of less than fully successful performance, conduct, or attendance. Notify the employee and take appropriate action as needed.
2. Obtain advice and assistance, as appropriate, from the human resource personnel office or EAP staff about dealing with the employee's problem.
3. Inform employees of the free and confidential services provided by the EAP. When employees have indicated that a problem external to the office is causing the deficiency, refer them to the EAP.

One option in documenting a disciplinary or performance problem includes using a written referral to the EAPs. The supervisor may choose to outline the employee's specific job problems and deficiencies and include an appointment with an EAP counselor at a specified time (arranged with the counselor earlier). In other situations, a supervisor may opt to give a verbal referral to the EAP, along with discussion about any on-the-job problems or deficiencies that need to be corrected. In that case, they would wait 30 to 60 days and if progress is not made, then written documentation about the job problems may be issued.

Employee participation in an EAP is strictly voluntary and confidential. However, with the employee's written consent, a supervisor may verify whether or not the employee kept the EAP appointment arranged by the supervisor.

4. Carefully consider any request for annual leave, sick leave, and leave without pay, changes in work schedule, or other means of resolving the job problem(s).

If a supervisor knows that an employee has a disability that is affecting the employee's job performance, the supervisor may try to determine whether a reasonable accommodation is available to raise the employee's performance to a satisfactory level. Medical documentation, consistent with 5 CFR 339, may be requested to support an accommodation request. Knowledge that a disability is negatively affecting an employee's ability to perform the essential functions of his or her job justifies a medical exam or inquiry as job-related and consistent with business necessity.

5. Provide positive feedback and encouragement when the employee makes progress toward satisfactory performance, conduct, or leave use. Work with the EAP administrator, coordinator, or counselor, as appropriate, to create a supportive work environment.

### **Q: What Should the Supervisor Do When Employees Indicate That Their Problems Stem from Alcoholism?**

When:

- Employees demonstrate that they are disabled by alcoholism and otherwise qualified for their positions
- The disability has caused the performance, conduct, or leave deficiencies
- The employee has asked for reasonable accommodation.

Take the following steps:

1. Refer the employee to the agency's EAP for counseling and assistance.
2. Offer an opportunity for the employee to undergo counseling and treatment.
3. Provide a firm choice or last chance agreement.
4. For additional guidance, refer to OPM's "Alcoholism in the Workplace: A Handbook for Supervisors".

### **Q: Do We Have to Consider Reasonable Accommodation When Referring Employees to the EAP?**

If an employee requests a reasonable accommodation, either orally or in writing, however vague, the agency must exercise due consideration responding to the request. First, refer to the agency's policy on reasonable accommodation (EO 13164 required all agencies to develop their own reasonable accommodation policies). When considering a request for reasonable accommodation, the provisions of the Americans with Disabilities Act of 1990 (ADA) was made applicable to Federal employees through the Rehabilitation Act of 1973, as amended. The discussion below addresses reasonable accommodation when an employee has a substance abuse problem. Another resource that which discusses reasonable accommodation is [www.disability.gov](http://www.disability.gov). Discussions about providing accommodations for drug and alcohol use may be found under "Employer's Resource."

### **Illegal Use/Abuse of Drugs**

The Americans with Disabilities Act of 1990 (ADA) also amended the Rehabilitation Act of 1973 to exclude from coverage those individuals who currently engage in the illegal use of drugs. Individuals who are erroneously perceived as engaging in illegal drug use, or who are no longer illegally using drugs and are enrolled in or have successfully completed a rehabilitation program, are not excluded from coverage. However, appellate decisions by the EEOC have held that employees who enter a treatment program after engaging in acts of misconduct are not entitled to the protections of the Rehabilitation Act.

### **Alcohol Abuse or Other Addiction**

Special requirements apply when employees raise their abuse of alcohol or prescription drugs as a disabling condition covered by the Rehabilitation Act and ask for some form of reasonable accommodation. These requirements apply in addition to the general recommendations on referral and other uses of the EAP.

The following paragraphs discuss these terms:

1. An employee with a disability, as defined in title 29 USC 705 (20) (B)CFR §1614.203(a), has an impairment that substantially limits one or more major life activities, such as working. Examples of other major life activities include:
  - o Caring for one's self
  - o Performing manual tasks
  - o Walking
  - o Seeing
  - o Hearing
  - o Speaking
  - o Breathing
  - o Interacting with others
  - o Learning.

An alcoholic, for example, may not be substantially limited in working, but may be substantially limited in performing another major life activity, such as interacting with others. Occasional alcohol abuse, without an addiction to alcohol, is not likely to substantially limit an individual's ability to work. Thus he or she would not be considered "disabled."

2. Your agency is only required to accommodate only the known physical or mental limitations of an otherwise qualified individual. Therefore, EEOC's guidance and case law require an employee to make the agency aware of these limitations by more than simple statements of a problem with alcohol.

Your agency may require the employee to supply acceptable documentation of his or her alcohol addiction either from a physician or expert in the field of alcoholism (such as an EAP counselor). Statements from a physician or an addiction expert unsupported by other evidence are ordinarily insufficient to show the existence of a disabling condition.

3. Employees who are disabled by alcoholism must also show that they are otherwise qualified for their positions. This means that, with or without reasonable accommodation, they can perform the essential functions of their positions without endangering the health and safety of themselves or others. The employee does not meet the test of being a "qualified" individual if:
  - o Performance or conduct deficiencies would impose an undue safety or security risk or operational burden on your agency or
  - o If the deficiencies are so egregious, harmful, or detrimental to your agency's mission that they render the employee unfit for employment.
4. Under EEOC's guidance as well as third party case law, employees must show the causal connection, or nexus, between their disabling condition and the performance, conduct, or leave problems that which prompted them to request a reasonable accommodation.

### **Q: When Should We Offer a Firm Choice or Last Chance Agreement?**

When an employee's alcoholism is the cause of ongoing or chronic performance, conduct, or leave deficiencies, the supervisor may consider providing a "firm choice" or last chance agreement to the employee. See the example of a last chance agreement in Appendix 7. While your agency is not required to give a firm choice or last chance agreement there may be instances where your agency may wish to utilize this option, rather than proceeding with removal. Some agencies have contractual agreements that require supervisors to provide a firm choice under specific circumstances. Verify your agency's policy by checking the agency's contractual agreements.

With firm choice, the employee is given a choice between:

- o Either following and completing a recommended rehabilitation program and maintaining acceptable performance, conduct, and leave use
- o Or otherwise experiencing the consequences of unacceptable performance, conduct, or leave use, up to and including removal.

If the employee agrees to the firm choice, management holds disciplinary action in abeyance pending demonstration of successful rehabilitation efforts.

If the employee does not agree with the recommendation for rehabilitation, prepare a unilateral statement that sets forth the terms of the last chance. Use clear and understandable language, for the agency's and the employee's benefit. If the employee fails to meet the terms set forth, take the planned action to removedisciplinary action.

If your agency merely suspects alcoholism, but the employee has not admitted to a problem, the agency should take appropriate disciplinary or non-disciplinary action, rather than failing to deal with the performance and conduct problems. An offer of assistance should be provided at the same time that management provides the employee with one of the following:

- Notices of unacceptable performance
- Counseling or warning letters
- Leave restrictions memoranda
- Letters imposing lesser discipline such as a reprimand
- Notices of suspension, demotion or removal

The supervisor should work with the human resources office to determine requirements for acceptable performance, conduct and/or leave usage. The EAP counselor is in the best position to determine the most appropriate treatment programs and monitor the employee's progress in the program.

### **Q: How Are the Privacy and Confidentiality of EAP Records Protected?**

Given the personal nature of visits to the EAP, employees are naturally concerned about the privacy and confidentiality of information maintained by the EAP. Your agency is required to inform employees about the procedures and laws affecting the EAP's system of records. When an employee comes to the EAP for assistance, the EAP staff should provide him or her with a written notice concerning the confidential nature of EAP records along with the conditions where information discussed in counseling may be disclosed.

The Privacy Act (5 U.S.C. 552a) covers all EAP records. In addition, EAP records of clients with alcohol and drug problems are protected further by 42 CFR 2 Part 2, "*Confidentiality of Alcohol and Drug Abuse Patient Records.*"

Depending on the location of the counseling site and the professional background of the EAP counselor, the EAP records may also be protected by state and professional licensing/credentialing laws and regulations. Generally, these laws and regulations prohibit EAP staff from sharing any information about clients to anyone outside of the EAP, without the specific written consent of the client.

### **Q: When Can Information About an Employee's Participation in the EAP Be Disclosed? Disclosure With Consent**

Obtain the employee's written consent before releasing any information, except where disclosure without the consent of the client is allowed (refer to the text in the following question). This applies to all releases, including those to supervisors, treatment facilities, and family members, without regard to the type of problem(s) the individual is experiencing. See Appendix 8 for a recommended consent form that contains all the elements required by current confidentiality regulations.

### **Disclosure Without Consent**

Disclosure without consent is only permissible in a few specific instances, such as:

- To medical personnel in a medical emergency

- In response to an order of a court of competent jurisdiction
- To comply with Executive Order 12564, "*Drug Free Federal Workplace*."

If requested, the EAP may confirm attendance at the program to a direct supervisor, if the employee attended while on official duty status or on sick leave. The EAP may also communicate with a qualified organization (such as a contractor) providing services to the program. The exchange is limited to the information needed by the organization to provide the required services.

Additionally, the EAP is required by law to report incidents of suspected child abuse and neglect (in some states, elder and spouse abuse) to the appropriate state and local authorities. These disclosures are limited to information about the abuse. Other information maintained in the EAP record can only be released according to the procedures outlined above.

Finally, the EAP you may make a disclosure to appropriate persons, such as law enforcement authorities and those persons being threatened, if the client has committed, or threatens to commit, a crime that would physically harm someone. This can only be done only if the disclosure does not identify the EAP client as an alcoholic or drug abuser.

The only exception to the above restriction is that, if such a crime takes place at the EAP, the EAP can reveal only to law enforcement officers that a client is an alcoholic or drug abuser, as long as the information disclosed under this exception is limited to the circumstances of the incident. Any other disclosure about the client may require a court order.

### **Secondary Disclosure**

Any information disclosed with the employee's consent must be accompanied by a statement that prohibits further disclosure unless the consent expressly permits further disclosures.

### **Q: Who Has Access to EAP Records?**

Only those individuals working directly with the program's clients have access to EAP client records. Additionally, agency EAP Administrators/Coordinators, whether they work directly with clients or oversee EAP contract staff, may have access to the records for the purposes of:

- Program oversight, evaluation, and quality assurance
- Destroying EAP records at the end of their period of maintenance
- Transferring EAP records from one contractor to another.

Clients of the EAP also have the right to access their own EAP records. If they wish to obtain complete copies or other information that may be contained in their EAP records, they may do so by making a written request to their agency EAP staff. If third parties are making the requests, written consent forms signed by the clients must accompany the requests. The EAP staff should always keep the original records.

### **Q: Who Owns the EAP Records?**

All EAP records are the property of the Federal department or agency sponsoring the program. These records include any records created and maintained by contractors. Contractors are custodians of EAP records while under contract to the agency or department. Contractors should return the original records to the appropriate persons at the termination of the contract. It is very important that contracts for EAP services contain specific language to the effect that:

- All EAP records created and maintained by the contractor are the property of the agency entering into the contract
- The contractor must return these records to the agency's EAP staff at the termination of the contract.

## **Q: How Should We Maintain EAP Records?**

### **File Contents**

To the extent possible, do not include identifying information in case files. While some identifying information may need to be entered in the files (e.g. consents for release of information), keep these to a minimum. Only enter information necessary for handling the case and do not make the EAP file contents part of, or stored with, employees' Official Personnel Folders or employee medical files.

Maintain information on family members of employees who use the services of the EAP in the files of the employees. The only exception to this requirement is when family members are clients of the EAP because of a substance abuse problem.

### **Security of Files**

Keep all case files in locked metal filing cabinets, preferably those equipped with combination padlocks and steel lock bars. Store cabinets in a secure area and lock the cabinets when not in use. Do not store records of other agency programs in these cabinets.

### **Electronic Record Keeping**

Take the same confidentiality safeguards for records stored electronically. Protect EAP data systems from entry by anyone outside the EAP. Use non-networked EAP computers or passwords.

### **Period of Maintenance**

Retain each record for three years after the employee has ceased contact with the EAP, whether or not the employee has terminated employment with the agency. Keep records longer if required by the Sstate where the records are kept, or until any litigation involving the employee is resolved. When applicable, contract staff may retain records past this period, for as long as any relevant state statutes of limitation require.

### **File Destruction**

Destroy files only after the required period of maintenance. Only the EAP Administrator or coordinator should destroy files. Have at least one witness present when files are destroyed or electronic deletions made. The witness should be an agency employee familiar with handling confidential records. Whenever possible, have other EAP staff members be witnesses. Add the names of employees whose records were destroyed to agency records of former EAP participants. Keep lists in accordance with the same confidentiality procedures that apply to other EAP records. Do not maintain information about clients once their files have been destroyed.

Destroy written files or records by shredding or burning. Destroy electronic records by deleting all portions of hard drives, floppy discs, tapes, and other electronic media that may contain the record. Degauss computers that leave the possession of the EAP.

**Q: Should Employees be Charged Leave When They Go to the EAP?**

Your agency may grant periods of excused absence to an employee for participation in the agency's EAP for problem identification and referral to an outside resource. This might take as many as five or six visits with the counselor.

In addition, your agency may grant excused absence for general employee orientation or education activities (e.g., program briefings, general orientations, seminars, etc.).

During any period(s) of treatment and rehabilitation through an outside resource, consider the use of annual or sick leave or leave without pay.