



**16th Annual FTA Drug and Alcohol Program
National Conference**

March 14-16, 2023

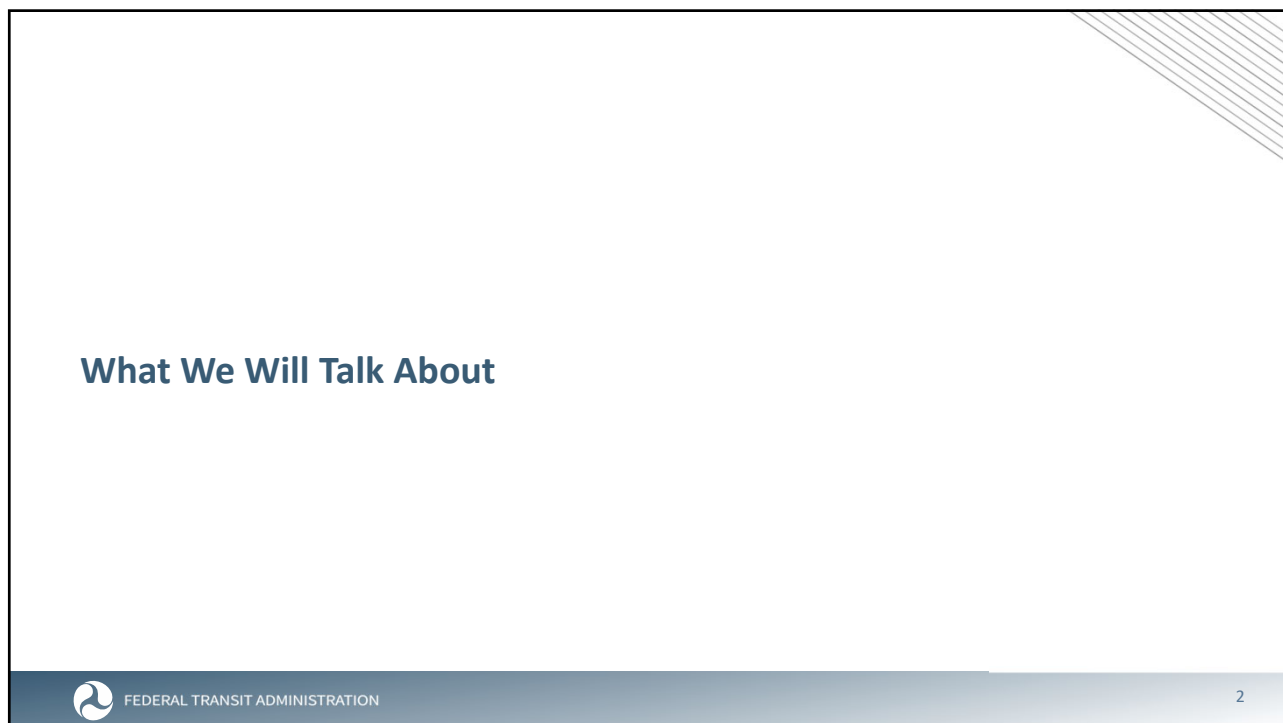
**Third Party
Administrator
(TPA)
Oversight**

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U.S. Department of Transportation
Federal Transit Administration


FTA
FEDERAL TRANSIT ADMINISTRATION

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What We Will Talk About

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Agenda

- Elements Employers Need to Keep Track of
- Choosing the Right TPA
- What TPAs Can Do for You
- Oversight of TPAs



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So Many Things to Keep Track Of



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Multi-tasking is Real



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A Compliant Program Takes Time

- General Company Responsibilities
 - OSHA
 - Workman’s Comp
 - COVID State Reporting
- FTA Drug and Alcohol Testing Program Responsibilities
 - New Hire Background Checks
 - Adding/Removing Employees to Random Testing
 - Violations and Discipline
- Etcetera, Etcetera, Etcetera

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TPA – Is It The Right Choice?



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Choose Wisely

- **Remember:** you are ultimately responsible
- Do they provide the services you need?
 - **Remember:** It is important they understand the differences between FTA and FMCSA (or other agencies)
- Do they provided the services the way you need them?
 - **Remember:** You choose what works best for you



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TPA – What Can They Do For You?



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What Help Do You Need?



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Policy

Templates

- Read over for compliance / Know what is in there
 - Alter to fit your company

- Ensure FTA requirements are met
 - <https://transit-safety.fta.dot.gov/DrugAndAlcohol/Tools/Checklist/PolicyReqsChecklist.doc>

FTA also offers a free policy builder: <https://transit-safety.fta.dot.gov/drugandalcohol/tools/PolicyBuilder/CreatePolicy.aspx>



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Education and Training

- May provide
 - Employee Drug Awareness
 - FTA has a free video
 - » <https://transit-safety.fta.dot.gov/DrugAndAlcohol/Tools/DrugAwarenessVideo/Default.aspx>

 - Reasonable Suspicion
 - Refresher training is not required
 - » 60 minutes on drugs and the signs and symptoms
 - » 60 minutes on alcohol and the signs and symptoms



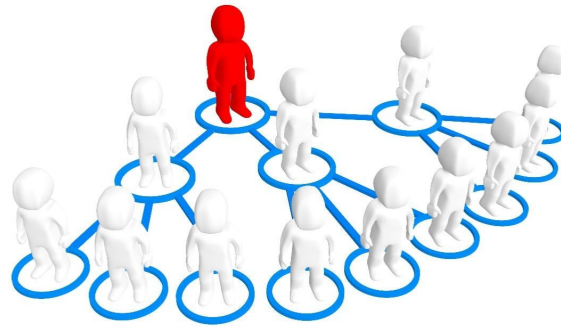
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Collection Sites

- Network Of Sites

- Ensure

- Qualified collectors and Breath Alcohol Technicians
 - » Up to date on retraining
 - Available during all hours of service



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TPA – Other Services and Things to Watch Out For

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Collection Sites

- Qualified Collector/BAT
- Correct steps taken during collections – well trained staff
- MRO and Employer copy of CCF
- Site available when you need them



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Collection Sites – Keep an eye on...

- Retraining qualifications: up-to-date
- Completion and documentation of Error Correction Training (ECT) after a fatal flaw
- Collection process followed per regulations
- Priority testing for reasonable suspicion and post-accident testing



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Laboratories

- HHS Certified
 - <https://www.transportation.gov/odapc/certified-laboratory-list>
- Receive Lab Summaries

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Labs – Keep an eye on...

- Summaries
 - Should be received twice a year (January and July)
 - Received from the TPA or directly from the lab
 - TPA lab account or individual?



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Medical Review Officer (MRO)

- Certified and Current
 - AAMRO or MROCC
 - Requalified every 5 years
- Timely verifications
 - Copy 2 CCF
 - Verification Statement with all required information
- Immediate notice of positives/refusals



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MRO - Keep an eye on...

- Delays in verifications – even negatives
- Delays in notification of positives/refusals to test
 - Employee may be scheduled to perform or still performing safety-sensitive functions



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Substance Abuse Professional (SAP)

- Qualified
- Maintain educational requirements
 - 12 CEUs every 3 years
- Compliant referral process
 - Provide at least two (2) SAPs



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SAP – Keep an eye on...

- Has the TPA verified:
 - SAP is still active
 - Credentials are up-to date
- Follow-up plan meets requirements
 - Meets minimums
 - Gives timeframes and not specific dates for testing



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Onboarding Services

- Pre-employment Testing
 - Negative result prior to safety-sensitive service
 - May automatically add to random testing pool

- Background Services
 - For FTA - 2 years, not 3
 - Both 40.25 and **40.25(j)**
 - Most missed question across the nation



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Onboarding – Keep an eye on...



- Blanket previous employer requests

- Requests for prior non-safety-sensitive work

- No documentation maintained of request or lack of response

***You should not require a potential employer to enroll in your TPAs program in order to receive DOT information**



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Random Testing – Roster Management

- Keep it current
- Updated prior to random selection or on a regular basis
 - Add new employees
 - Remove terminated employees
 - Employees on extended leave
 - You choose whether to remove or not



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Rosters – Keep an eye on...

- Delay in updates
- Dilution of pool
- Delays in testing
 - Predictable gaps at the beginning of the selection period
- Requirement to complete testing before selection period ends



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Random Testing

- Unbiased
- Choose timeframe
 - E.g., Monthly, Quarterly
- Choose type of notification
 - Ensure in a timely manner
- Meet testing rates



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Random Testing – Keep an eye on...



- Excused selections NOT being made up
 - Mad dash to meet testing requirements at the end of the year
- Batch Testing
 - Selections provided late and then required to be completed in condensed timeframe
- Alternates
 - Use in the order received and for the test type selected



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Return-to-Duty and Follow-Up Testing

- Set up testing schedule based on the SAP follow-up plan
- Send testing notifications
 - You decide the actual date of testing

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RTD and FU Testing – Keep an eye on...

- RTD
 - takes the place of the Pre-employment
- FU
 - Predictable
 - Missed follow-ups



Tests not directly observed

- Memorandum of record or retest

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Forms – Are they compliant?

- Background Request Forms
- Testing Notifications
 - Ensure it states FTA
 - Best to document time of notification and time of arrival at testing site
 - Box for observed (if required)
- Post-Accident Determination
 - FTA thresholds
 - Able to document delays
- Reasonable Suspicion Determination

<https://transit-safety.fta.dot.gov/DrugAndAlcohol/Tools/Default.aspx>



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In-House Determinations



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Your Trained Staff, Not the TPA

- Post-accident testing
- Reasonable suspicion testing

FTA has free determination pocket cards



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TPA – Stay on Top of It



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Oversight

Ask Questions

- How long have they been in business?
- What services do they provide?
- Are they familiar with FTA regulations? How many other FTA clients do they have?
- How many testing locations in your area? Is there a location(s) available for off-hours testing?
- Do they assist with providing required documentation?

Ensure that the fees make sense for your company and the services you are receiving



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Oversight

Ask for Documentation

- Management Information System (MIS) – due 3/15
- Random compliance – single pool/consortium
- Lab statistics
 - Semi-annually
 - Sent to TPA or you directly
 - For your company only or multiple companies combined
 - Remember:
 - Should still receive a statement if less than 5 tests in 6 months
 - Stats may show more positives than you had
- Certificates for MRO



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Oversight

Collection Site Review

- Collectors up-to-date on qualifications
- All BATs and collectors subscribe to ODAPC list-serve
- EBT calibration logs
- Limited access to testing area/privacy for breath test
- Enclosure is secure
- Do they know:
 - Shy bladder process
 - Procedures for a specimen with a temperature out of range
 - How/when to conduct a direct observation



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Oversight

Review Paperwork – CCF/ATF

- Ensure the correct agency
- SSN/Emp ID used
 - CDL # could erroneously land your employee in the FMCSA Clearinghouse
- All sections filled out correctly (missing signatures, etc.)
- Directly observed (checked if it was required)
- No “shadowing”
- Remarks if necessary
- ATF - No written results if the EBT prints one
- ATF - Yes/No for “15-Minute Wait” only checked if a confirmation test was required



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TPA – A Checklist



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Ensure They Handle Things Correctly

- A TPA may act as an intermediary in the transmission of any drug test results. Non-negative results should be transmitted on the same day.**

However, best practice is for the employer to also receive a call directly from the MRO upon verification of a non-negative result.

- The TPA may not transmit alcohol results of 0.02 or greater from the BAT to the employer. These should be direct calls to the employer.**

Section 40.345(a) states: "As a C/TPA or other service agent, you may act as an intermediary in the transmission of drug and alcohol testing information in the circumstances specified in this section only if the employer chooses to have you do so. Each employer makes the decision about whether to receive some or all of this information from you, acting as an intermediary, rather than directly from the service agent who originates the information (e.g., an MRO or BAT)."

Section 40.355 states: "As a service agent, you are subject to the following limitations concerning your activities in the DOT drug and alcohol testing program: (d) You must not act as an intermediary in the transmission of alcohol test results of 0.02 or higher from the STT or BAT to the DER."

NOTE: An alcohol verification sheet is not required. If your TPA provides these sheets, you also need to receive and maintain the Employer Copy of the ATF.



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Ensure They Handle Things Correctly

- TPAs are NOT allowed to transmit the following information (Appendix F to Part 40, item 1):
 - Laboratory drug test results to the MRO
 - Medical information from MROs to employers
 - SAP reports to employers
- TPAs are NOT allowed to:
 - Remove employees on behalf of the employer (i.e., acting as the DER upon receipt of a non-negative result)
- Verify your TPA's method of ensuring confidentiality when transmitting test results.
- Ensure the TPA's compliance with record retention.
 - How long to obtain records once requested? (Example: upcoming audit)



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Ensure They Handle Things Correctly

- Verify the TPA's method for conducting random drug and alcohol selections.
 - Are alternates used?
 - Are copies of random selection lists and employee rosters maintained? How long?
 - Does the TPA ensure the employer achieves the minimum annual random testing rates?

Section 655.71 states: (b)(3) One year. Records of negative drug or alcohol test results. (c) Types of records. The following specific records must be maintained: (1) Records related to the collection process: (i) Collection logbooks, if used. (ii) Documents relating to the random selection process.

- Does the TPA assist with preparing the annual MIS?
 - If so, you as the employer are the certifier and need to ensure its accuracy.
- Ensure the TPA does not impose any conditions or requirements that are not authorized by DOT regulations.
 - Example: Additional non-federal testing for employees in the return-to-duty program.



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REMEMBER
You are paying for the services
They work for **YOU**

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Questions



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