



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

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**The Return-to-Duty
Process**

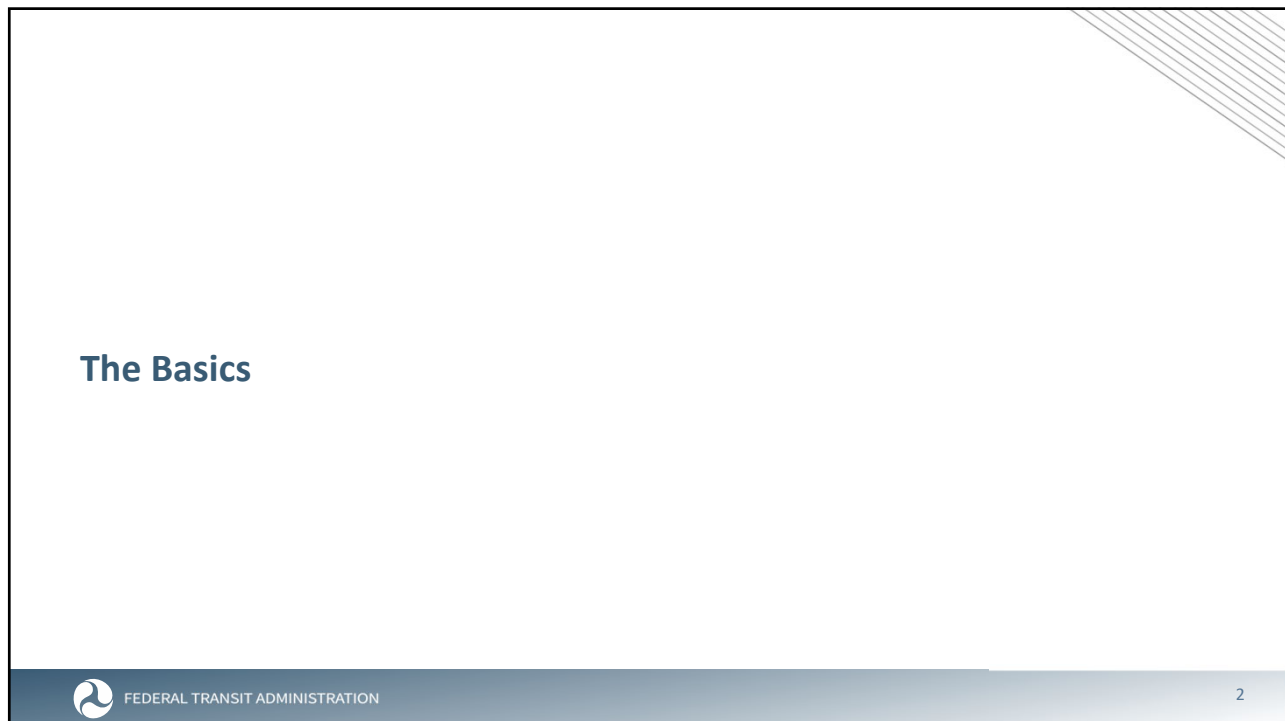
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U.S. Department of Transportation
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FTA
FEDERAL TRANSIT ADMINISTRATION

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The Basics

 FEDERAL TRANSIT ADMINISTRATION

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What Does “Second Chance” Mean?

- Not a Part 40 term
- Common industry parlance
- Today’s focus: how to return employees to safety-sensitive duties following a DOT drug or alcohol violation



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Is “Second Chance” Required?

- Not at all
- Rules grant employers a choice regarding second-chance



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Overview of Second Chance

- A violation occurs
- Employee referred to a Substance Abuse Professional (SAP)
- Initial meeting between SAP and employee
- Employee participates in education and/or treatment
- Follow-up meeting between SAP and employee
- SAP determines if employee complied
- If yes, employer decides whether to return employee to safety-sensitive functions
- Follow-up testing occurs for one to five years



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Who are SAPs?

What do they do?

How do they do it?

- **Who are they?**
 - Professionals with specific credentials defined by Part 40 (e.g., licensed physicians, social workers, psychologists, etc.) with experience and CEUs
- **What do they do?**
 - Initial evaluation
 - Recommendations for education and treatment
 - Follow-up evaluation and aftercare recommendations
 - Testing schedule
- **How?**
 - Through a combination of their clinical experience and knowledge of the regulations
- **Not an advocate for employer or employee. Role is to protect public's interest in public safety.**



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SAP Referrals

- SAP referrals must occur after a DOT violation
 - Refusal to take a drug or alcohol test
 - Verified positive drug test
 - Alcohol result of 0.04 or greater
 - Other violations (e.g., alcohol use w/in four hours prior to SS duty)
- SAP referrals occur whether or not the employee is offered a second-chance
- Applicants with a pre-employment test violation must be given a SAP referral



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Referral No-Nos

- SAP is a DOT-specific term. Only safety-sensitive employees with DOT violations are referred.
- Alcohol result of less than 0.04?
 - **No SAP referral!**
- The employee tested positive on a non-DOT test?
 - **No SAP referral!**
- The employee violated a company provision?
 - **No SAP referral!**
- In these cases (and under employer's authority), refer to an "EAP," "Counselor" or similar to avoid confusion



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Best Practice: Make Thoughtful SAP Referrals

- Check to make sure the SAPs on your list are still qualified before a referral
- Talk to your SAPs
 - Do they understand the technical aspects of Part 40's Return-to-Duty process?
 - Do they understand the SAP's role as gatekeeper for the Return-to-Duty Process?
 - How many cases have they overseen? Did the SAP ever have a case where they determined the employee did not comply with their education/treatment recommendations?
- As the employer, you are responsible for your service agents' compliance



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Make Thoughtful SAP Referrals, Cont.

Once the referral has occurred and the employee has been evaluated, no changes allowed.

- “As an employer, you must not seek a second SAP's evaluation if the employee has already been evaluated by a qualified SAP.” 40.295(b)
- “As the employer, you must not impose additional testing requirements (e.g., under company authority) on the employee that go beyond the SAP's follow-up testing plan.” 40.307(d)(4)

Thus, especially if you have second-chance, make informed referrals.



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The SAP Process

Initial meeting, education and/or treatment, follow-up meetings, aftercare, and the SAP's perspective



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Overview of SAP Functions

- Initial evaluation with referred employee
- Recommend education and/or treatment
- Send initial evaluation report to employer
- Assess employee's participation in education and/or treatment
- Follow-up evaluation with referred employee
- If employee demonstrated successful compliance, determine follow-up testing plan and any aftercare recommendations
- Send follow-up evaluation report to employer



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For Your Consideration

- Not everyone who has a violation has a drug or alcohol problem
- The SAP evaluation is essential because it will determine the type of treatment and duration, monitoring while in treatment, determination for return to safety-sensitive duty, continuing care plan and follow up testing schedule



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Initial Evaluation

What are the clinical components of an initial evaluation?

- Family configuration
- Employment history
- Medical history
- Legal history
- Financial status
- Psychiatric history (employee and family)
- Substance use history (employee and family)
- Spirituality and supports



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Levels of Care and Education

- Education and/or treatment is mandatory
- Depending on evaluation, multiple treatment options:
 - Self-Help Groups
 - 1:1 Outpatient Therapy
 - Day/Evening Programs
 - Intensive Out-Patient (IOP) Programs
 - Medical Detoxification
 - Sober Living
 - Residential Rehab Programs (usually 21 to 28 days)
 - Residential Half-Way House (3 to 9 months)



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Treatment/Education Plans

- Almost always a combination of one or more modalities
 - Self-help, church, 1:1 therapy
 - Detox, IOP, 1:1 therapy
 - Detox, residential rehabilitation
 - Sober living, self-help participation, 1:1 therapy
- Educational referrals are usually harder to find



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Follow-Up Evaluation

- Clinical concerns
 - Insight
 - Understanding of substance use disorder (SUD) concepts
 - Understanding of future violations and consequences

- Mechanics
 - Review documents
 - Dates of participation and discharge status
 - Program recommendations . . . Has the employee followed through?
 - Letter of determination to DER



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Follow-Up Testing & Aftercare Recommendations

- Follow-Up Testing:
 - Minimum of 6 in first 12 months
 - Regulations state SAP can test up to 60 months (so I do)
 - SAP determines number of tests
 - SAP determines drug, alcohol or both
 - Employer determines dates

- Aftercare:
 - If the SAP prescribes aftercare recommendations, who will monitor compliance?



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Return-to-Duty

Steps to take after education and/or treatment has concluded and the SAP has issued their follow-up evaluation report



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Deciding to Return an Employee to Performance of Safety-Sensitive Function

- Employees may never return to the performance of safety-sensitive functions unless:
 - The SAP's follow-up evaluation letter clearly states the employee has complied with the SAP's recommendations
 - The employee undergoes return-to-duty testing with a negative result
- Ultimately, it is the employer's decision on whether to return the employee to a safety-sensitive position



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Review SAP Letters

- Make sure the Initial Evaluation Report and the Follow-up Evaluation Report have all items required by 40.311
- Make sure both reports do not include misleading typos, confusing turns of phrase or contradictory language
- Have the SAP correct any mistakes



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Review Follow-Up Testing Plans

- Make sure the plan includes at least the minimum number of tests (6 over 12 months)
- Make sure the plan does not exceed 60 months
- Make sure the plan is clear
 - Does it clearly state that follow-up testing is for drugs, alcohol, or both?
 - If the plan is stated in more than one place, is the plan consistent?



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Compliant Follow-Up Testing

Auditors pay special attention to the following:

- Is the SAP's plan being accurately followed? Did the employer perform too many tests or too few tests?
- Is testing unpredictable? If auditors observe the employee only goes for follow-up testing at the beginning of the month, there is a compliance issue.
- Are follow-up drug tests always observed? If a test was not observed, did the employer or MRO discover this in a timely manner and require another test?



Follow-Up Testing & Leaves of Absence

- Whenever the employee is removed from a safety-sensitive position, testing is paused
- This will often affect the timing of testing stated in the SAP's follow-up testing plan
- Example:
 - Joe Doe is prescribed 1 follow-up drug test per month for 24 months after returning to duty (24 tests over 2 years)
 - After 6 months and 6 successful tests, Mr. Doe goes on medical leave for 3 months
 - Testing is paused and resumes when he returns for a total of 24 tests over an elapsed time of 27 months
- Keep track of any pauses in testing and document the reasons for them



Record Keeping

§ 40.333 states employers must keep the following records for five years:

- Records of alcohol test results indicating an alcohol concentration of 0.02 or greater
- Records of verified positive drug test results
- Documentation of refusals to take required alcohol and/or drug tests (including substituted or adulterated drug test results)
- SAP reports
- All follow-up tests and schedules for follow-up tests

How long must records related to an original violation be retained when an employee successfully returns to duty and then undergoes follow-up testing?



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Thank You

Questions?

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