

# NIH Policy Manual

## 2300-792-2 - Employee Counseling Services Program

**Issuing Office:** OD/OM/OHR/WRD **Phone:** [\(301\) 402-9203](tel:3014029203)

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Transmittal Notice

1. **Explanation of Material Transmitted:** This chapter provides guidance on counseling and rehabilitative services provided to NIH employees with alcohol abuse, drug abuse and/or emotional/behavioral problems.
2. **Filing Instructions:**

**Remove:** NIH Manual 2300-792-2, dated 06/01/88.

**Insert:** NIH Manual 2300-792-2, dated 08/09/11.

**PLEASE NOTE:** For information on:

- Content of this chapter, contact the issuing office listed above.
- NIH Manual System, contact the Division of Management Support, OMA on 301-496-2832, or enter this URL: <http://oma.od.nih.gov/manualchapters>.

### A. Purpose

This chapter states the National Institutes of Health (NIH) policy concerning counseling services for employees who may have alcohol abuse, drug abuse and/or emotional/behavioral problems which could result in deteriorating work performance, misconduct, time and attendance problems and/or reliability issues. It discusses counseling and rehabilitation services which the NIH offers and describes the responsibilities of human resources staff, program officials, supervisors, and employees.

### B. Eligibility

This policy applies to all NIH employees, including those outside the Washington Metropolitan area. It applies equitably at all levels of the organization and to all grades and pay plans. Those field offices without adequate health facilities are expected to request guidance from the Medical Director, Occupational Medical Service (OMS), Division of Safety, Bethesda, MD, (301) 496-4411, [http://dohs.ors.od.nih.gov/OMS\\_main.htm](http://dohs.ors.od.nih.gov/OMS_main.htm), and to use community resources wherever available. OMS administers the Employee Assistance Program (EAP), <http://dohs.ors.od.nih.gov/eap/>, which supplements, but does not replace, existing procedures for dealing with problem employees through appropriate personnel authorities.

Additional resources include the NIH Office of the Ombudsman, (301) 594-7231, <http://ombudsman.nih.gov/>; CIVIL Response Team Coordinators, (301) 402-4845, <http://hr.od.nih.gov/hrguidance/civil/default.htm>; the Office of Equal Opportunity & Diversity Management (OEODM), (301) 496-6301, <http://oeodm.od.nih.gov/>; the Office of Human Resources (OHR), NIH Training Center, 301-496-6211, <http://trainingcenter.nih.gov/>.

## C. References

1. 42 U.S.C. § 290dd provides that the Secretary of the U.S. Department of Health and Human Services (HHS), acting through the Administrator of the Substance Abuse and Mental Health Services Administration (SAMHSA), shall be responsible for fostering substance abuse prevention and treatment programs and services for government employees.
2. 42 U.S.C. § 290dd-2 provides for confidentiality of alcohol and drug abuse patient records. Implementing regulations are contained in 42 C.F.R. Part 2.
3. 5 U.S.C. § 7901 authorizes heads of Federal Departments to establish health service programs for the purpose of promoting and maintaining the physical and mental fitness of Federal employees.
4. U.S. General Services Administration (GSA) building regulations (41 C.F.R. §§ 102-74.400--405 ) and NIH regulations (45 C.F.R. § 3.42(d)) prohibit a person from selling, consuming or using intoxicating beverages, narcotics or similar drugs, except in connection with official duties, in the course of professional treatment, in living quarters, or as otherwise authorized by the Director, NIH.
5. 5 C.F.R. Part 792 provides basic U.S. Office of Personnel Management (OPM) guidance on Federal Employees' Health and Counseling Programs.
6. 5 C.F.R. Part 2635 provides standards of ethical conduct for Executive Branch employees. 5 C.F.R. Part 5501 provides supplemental standards of ethical conduct for employees of HHS.
7. HHS Personnel Instruction 752, dated 03/20/09, provides guidance on discipline and adverse actions, including removals, suspensions, reductions in grade, reductions in pay, and furloughs of 30 days or less. This Instruction also provides guidance on the use of enforced leave.
8. HHS Personnel Instruction 792-5 (Interim), dated 04/13/90, provides the policy and requirements of the Department as they relate to a drug-free workplace.
9. [NIH Manual Chapter 2204](#), dated 08/01/01, provides the policies and procedures for reasonable accommodation for employees who develop a disabling condition while employed at the NIH
10. [NIH Manual Chapter 1743](#), "Keeping and Destroying Records," Appendix 1, NIH Records Control Schedule

## D. Responsibilities

1. Chief, Workforce Relations Division (WRD), OHR:

- a. Providing overall guidance and assistance in the implementation of the NIH procedures related to employee conduct, performance issues, alcohol abuse, drug abuse, and/or emotional/behavioral problems. Using information provided by the Institutes and Centers (ICs) and other appropriate sources, WRD periodically evaluates the use of these procedures.
- b. Providing information to NIH staff regarding the availability of employee support resources and services such as EAP; CIVIL; Office of the Ombudsman; OEODM; the Office of Research Services (ORS) Division of Police; and OHR, Workforce Support and Development Division (WSDD), NIH Training Center.
- c. Providing overall guidance and regulatory oversight to OMS and ICs for interpretations of those Merit Systems Protection Board (MSPB) decisions in instances where adverse action may be appropriate.
- d. Providing informational seminars and consultative services regarding procedures for handling employee conduct, performance, or emotional/behavioral issues and available support services and resources to supervisors and managers, employee groups, and other appropriate audiences.
- e. Furnishing technical guidance to supervisors and managers on regulations and procedures related to employee conduct and performance issues, discussing available options, and advising them on taking appropriate personnel action when counseling or rehabilitation efforts are in process or at their conclusion.

## **2. Medical Director, OMS, Division of Safety:**

- a. Ensuring evaluation and referral services are available;
- b. Identifying community treatment services as appropriate; and
- c. Ensuring supervisory training and employee awareness programs are provided in the area of alcohol, drug abuse, and emotional/behavioral problems.

## **3. EAP Counselors:**

- a. Advising employees of the confidential nature of the EAP, and providing a consent form for review and signature before a supervisor can be advised of any issues other than expected absences from the job for consultation.
- b. Evaluating, advising and referring employees as appropriate to internal and external resources for treatment and support services for alcohol abuse, drug abuse and/or emotional/behavioral problems. May also refer an employee to the WSDD NIH Training Center to identify development options.
- c. In collaboration with WRD, developing training materials for supervisors and managers, employee groups, and other appropriate audiences.
- d. Maintaining close working relationships with community resources which offer treatment and rehabilitative services locally. These resources may include community psychiatric clinics or services, Alcoholics Anonymous, etc. Professional consultation from OMS staff physicians and the OMS psychiatrist will be available to the counselors.

- e. Maintaining records and gathering information/statistics in coordination with other appropriate offices, for evaluation and reporting to OPM. Disclosure of such records will be statistical in nature and shall not identify individuals.

#### 4. Supervisors:

- a. Supervisors are responsible for the work of the employees under their direction. In relation to alcohol abuse, drug abuse, and emotional/behavioral problems, this requires supervisors to be aware of NIH policies related to these medical conditions and document specific instances in which an employee's work performance/conduct fails to meet acceptable standards or where there appears to be a pattern of deteriorating work performance/conduct.
- b. Supervisors are responsible for obtaining assistance from their servicing OHR office, including WRD, when dealing with employees who are not ready, willing and able to work, and subsequently formally referring an employee to the EAP for advice and consultation, referring an employee to OMS for medical evaluation and treatment determination, and/or taking corrective action, as necessary.
- c. Supervisors may use discretion in seeking out the appropriate resources (EAP, CIVIL, etc.) to address issues or events that may impact organizational performance, such as grief counseling or handling workplace violence.

#### 5. Employees:

Self-referral is a voluntary option for persons wishing to seek help in managing alcohol dependence, drug abuse, and/or emotional/behavior issues. Self-referral is regarded with the same level of confidentiality and non-disclosure requirements as the referral options noted above. No information (*except validation of an employee's absence from the worksite*) will be communicated to the supervisor without a Release of Information (ROI) form being signed by the employee.

### E. Definitions

1. **Alcohol Abuse:** A treatable problem in which the employee's work performance or conduct may be impaired as a result of the use of alcohol. Alcoholism is a disability under Section 501 of the Rehabilitation Act of 1973 (29 U.S.C. § 791) (Rehabilitation Act).
2. **Drugs and/or Medications:** Substances that affect the functions of the body or the mind when taken into the body or applied to its surfaces.
3. **Drug Abuse:** A treatable problem in which the employee's work performance or conduct may be impaired as a result of use of legal or illegal drugs. Drug abuse is a disability under Section 501 of the Rehabilitation Act. An employee who is currently engaging in the illegal use of drugs is not an "individual with a disability" who is entitled to protection under the Rehabilitation Act when a Federal agency acts on the basis of the employee's illegal drug use. 29 U.S.C. § 705(20)(C)(i).

Note: For purposes of the Rehabilitation Act, “illegal use of drugs” means the use of drugs, the possession or distribution of which is unlawful under the Controlled Substances Act [21 U.S.C. §§ 801, et seq.], but . . . does not include the use of a drug taken under supervision of a licensed health care professional, or other” permissible uses. 29 U.S.C. § 705(10)(B).

4. **Emotional/behavioral problems:** Personal problems which may impair work performance. Such problems include depression, anxiety, stress and psychiatric illnesses, and those stemming from alcohol abuse, drug abuse, and/or emotional/behavioral problems of another person, such as a spouse, supervisor, or co-worker. Such problems can also result from working conditions and the nature of a job itself.

## **F. Policy**

1. Emotional/behavioral problems and the use of alcohol or drugs are of concern to NIH as they relate to conduct and performance on the job. When an employee's alcohol use, drug use, and/or emotional/behavioral problems interfere with the efficient and safe performance of his/her assigned duties or the duties of other employees, reduces dependability, or reflects a negative impact upon the NIH, there must be action in the form of:
  - a. Following non-disciplinary procedures under which the employee may be provided information regarding all available resources, including referral to the EAP, in writing as well as orally; and/or
  - b. When applicable, invoking the appropriate personnel action in coordination with WRD when an employee's conduct or performance remains unacceptable following appropriate intervention methods; and/or
  - c. Informing CIVIL when a situation involving threats or aggressive acts arises or already has occurred; and/or
  - d. Informing the ORS Division of Police when a behavioral issue involves criminal or illegal conduct directed toward or potentially harmful to the person or property of others.

The status of the employee who is not ready, willing, and able to work will be handled on a case by case basis in consultation with WRD, in coordination with other appropriate resources and employee services.

## **G. Referral for Evaluation and Treatment**

1. Supervisory Referral – When work performance/conduct is in question:
  - a. The supervisor may initiate the process that notifies WRD, or other appropriate sources/officials, of potential work performance and/or conduct issues involving an employee. When an employee demonstrates an inability or unwillingness to

perform adequately, or the supervisor suspects the employee may have an alcohol abuse, drug abuse and/or emotional/behavioral problem, the supervisor may contact the WRD for advice and consultation about referral to other appropriate resources and services including EAP, CIVIL, OMS, the Ombudsman, OEODM, ORS, and WSDD.

- b. After the supervisor has consulted with WRD, the supervisor may meet with the employee to describe the employee's poor work performance/conduct, discuss specific corrective action to be taken to improve performance, conduct and/or attendance, and explain the time frame by which corrective action is to be completed.
- c. The supervisor may tell the employee that, if a personal problem is involved, resources such as EAP are available and he/she may contact them directly with confidentiality. A copy of the brochure covering the variety of services provided by the EAP or other resources should be given to the employee.
- d. If performance, conduct, and/or attendance does not improve, the supervisor should meet with the WRD to discuss the problem and determine the next course of appropriate action. Remedial actions may include providing verbal counseling and/or a written memorandum pointing out specific issues to be addressed and formally referring the employee to the EAP.
- e. Depending on the circumstances, the supervisor may or may not undertake formal disciplinary action to resolve the employee's conduct and/or performance issue(s). Informal disciplinary actions are not placed in the electronic Official Personnel Folder (eOPF).
- f. The importance of firm and consistent application of corrective procedures to avoid disciplinary action cannot be overstated; however, if the employee refuses help and performance/conduct continues to be unsatisfactory, the supervisor, in collaboration with the WRD, should pursue the appropriate personnel action.

## 2. Referral for evaluation involving an employee's impairment to perform essential duties:

When the employee may be under the influence of alcohol, drugs and/or medications which substantially impairs his/her ability to perform the required duties of his/her position, the supervisor may take the following actions:

- a. If the employee acknowledges that he/she is incapacitated by alcohol, drugs, and/or medications, the supervisor should notify WRD immediately for further guidance, which may include releasing the employee from duty and sending the employee home or to an emergency room if arrangements can be made for him/her to arrive safely.
- b. With the employee's permission, he/she may be escorted to OMS and evaluated there.
- c. Under the employee's consent, OMS medical assessment will include determining current ability to safely perform duties, recommending further evaluation, establishing a medical treatment plan, and preparing appropriate communication with the supervisor and/or WRD as appropriate. Based on the medical assessment, one of the following options may be recommended:

- (1) Arrange for immediate referral for emergency room evaluation and/or hospital admission.
  - (2) Arrange for employee to be escorted home (*consider emergency contact information, family member, or taxi*) because he/she is too impaired to work.
  - (3) If acute impairment is not demonstrated, the employee may be medically cleared to return to work that day.
3. If the employee refuses to go to OMS and/or EAP, and there is a likelihood he/she is impaired by alcohol, drugs, and/or medication which prevents him/her from performing the essential duties of his/her position, the supervisor should contact WRD immediately for further guidance. In the interim, the employee should be asked to wait in the supervisor's office until arrangements can be made to have him/her safely sent home. In the event there is a threatening, aggressive, and/or otherwise inappropriate reaction to this request, or the situation turns volatile, the supervisor should contact CIVIL or the ORS Division of Police for appropriate assistance.
4. OMS staff and/or the supervisor may refer an employee with suspected or proven substance abuse to an EAP counselor. The EAP counselor may advise the supervisor regarding the employee's compliance with treatment recommendations with written consent. OMS will communicate with the supervisor, WRD and/or EAP as follows:
  - a. Verbally advising the appropriate WRD Liaison, Supervisor of Record, or EAP Counselor of the status of the employee's ability to perform work duties;
  - b. Completing Form NIH 2558, [OMS Medical Evaluation of Functional Activities](#), describing the employee's ability to perform work duties and the need for further OMS assessment;
  - c. Issuing a memorandum documenting the supervisor's referral and OMS recommendations for treatment or rehabilitative services.

## **H. Confidentiality of Records**

The confidentiality of records relating to alcohol abuse, drug abuse, and/or emotional/behavioral problems is established by law. The law and implementing regulations require, among other things, that a person must provide prior written consent for any disclosure of such records. Therefore, records on any employee who has been referred for diagnosis and treatment will be maintained in the strictest confidence and security.

Communication of information between OMS staff having a need for such information in connection with its official duties does not constitute disclosure under the law and regulations.

Communications from the EAP staff to supervisors and personnel staff concerning the participation of individual employees in the program does not constitute disclosure; however, EAP staff will provide such information only in those cases where the employee has given prior written consent.

## I. Illegal Activities

If illegal activities, particularly criminal activities, are suspected and/or demonstrated by an employee in the workplace, the supervisor should report such activities immediately to the ORS Division of Police.

## J. Internal Controls

The purpose of this NIH Manual Chapter is to provide guidance on counseling and rehabilitation services offered to NIH employees concerning conduct and performance issues including alcohol, medication, and drug abuse, and emotional/behavioral problems.

1. **OHR, Office of the Director, NIH is responsible for reviewing internal controls relative to this Chapter.** Through this issuance, the OHR is accountable for the method used to ensure internal controls are implemented and working.
2. **Frequency of Review:** OHR will review the manner in which the employee counseling services are being used as part of the recurring employee relations functional assessment.
3. **Method of Review:** OHR will periodically obtain feedback from the various support services and resources including WRD, OMS, EAP, ORS, and WSDD on the use and effectiveness of the employee counseling services and compliance with this Chapter. OHR will consolidate review reports for dissemination to executive management.
4. **Review reports may be sent to the Deputy Director for Management, NIH.**

## K. Records Retention and Disposal

All records (e-mail and non-e-mail) pertaining to this chapter must be retained and disposed of under the authority of [NIH Manual 1743](#), “Keeping and Destroying Records, Appendix 1, NIH Records Control Schedule,” Item 2300-792-6 and Item 2300-709-1.

NIH e-mail messages, including attachments that are created on NIH computer systems or transmitted over NIH networks that are evidence of the activities of the agency or have informational value are considered Federal records. These records must be maintained in accordance with current NIH Records Management guidelines. If necessary, back-up file capability should be created for this purpose. Contact your IC Records Liaison for additional information.

All e-mail messages are considered Government property, and, if requested for a legitimate Government purpose, must be provided to the requester. Employees’ supervisors, NIH staff conducting official reviews or investigations, and the Office of the Inspector General may request access to or copies of the e-mail messages. E-mail messages must also be provided to Congressional oversight committees if requested and are subject to Freedom of Information Act requests. Back-up files are subject to the same requests as the original messages.