

# MANUAL

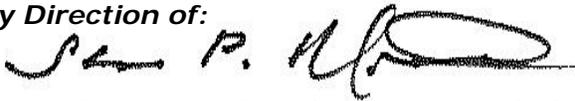
## Commonwealth of Pennsylvania Governor's Office

**Subject:**

State Employee Assistance Program

**Number:**

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**By Direction of:**

Sharon P. Minnich, Secretary of Administration

**Date:**

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**Contact Agency:**

Office of Administration, Office for Human Resources Management (OA/HRM), Bureau of Employee Benefits and Services (BEBS), Workplace Support Services Division, Telephone 717.787.8575

This manual contains procedures for administering the State Employee Assistance Program (SEAP), as outlined in *Management Directive 505.22, State Employee Assistance Program*, and *Management Directive 505.25, Substance Abuse in the Workplace*. It contains significant changes reflecting changes in commonwealth procedures.

Agencies under the Governor's jurisdiction and independent agencies that participate in SEAP are required to comply with the procedures in this manual.

Questions regarding procedures involving SEAP should be directed to the SEAP Program Director in OA/HRM BEBS, Workplace Support Services Division (OA-SEAP) at 717.787.8575 or [ra-workplacesupportservices@pa.gov](mailto:ra-workplacesupportservices@pa.gov).

Questions regarding discipline and labor relations issues should be directed to OA/HRM, Bureau of Labor Relations at 717.787.5514.

**This manual replaces, in its entirety, *Manual 505.3*, dated November 29, 2004.**

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## **PART ONE – GENERAL INFORMATION**

### **SEAP ELIGIBILITY AND BENEFITS.**

- 1.** The commonwealth, through the Pennsylvania Employees' Benefit Trust Fund, contracts with a private managed care behavioral health service provider to coordinate and deliver SEAP services, called the SEAP Central Coordinating Office (SEAP-CCO).
- 2.** SEAP services include a 24 hour toll-free hotline staffed by master's level counselors, free face-to-face evaluation sessions, referrals to additional services, case management of employer based referrals, critical incident stress debriefings, follow-up services with callers, and management consultation services.
- 3.** All agencies under the Governor's jurisdiction participate in SEAP, as well as a number of independent agencies. Most employees in those participating agencies are eligible for SEAP from their first day of employment, including both permanent and non-permanent employees. The following groups of individuals are not eligible for SEAP:
  - a.** Annuitant.
  - b.** Official/Board Member (sub-group E-3 only).
  - c.** PA National Guard.
  - d.** Health Registrar.
  - e.** Volunteer (sub-group U-5 only).
  - f.** External Person.
  - g.** Employees in a "leave without pay without benefits" status.
- 4.** Family members of eligible employees are also eligible for SEAP. Family members include:
  - a.** Spouse or partner.
  - b.** Children, regardless of age or residence.
  - c.** Other individuals who reside in the employee's home, whether or not they are related to the employee.
  - d.** Other family members, regardless of residence. Examples include, but are not limited to, parents, siblings, aunts/uncles, and grandparents/grandchildren.
- 5.** All SEAP services are accessed through the SEAP toll-free hotline, and services are available nationwide. The SEAP benefits for eligible employees and their family members include:
  - a.** Free unlimited use of the SEAP toll-free hotline, 1.800.692.7459.

- b. Up to three free face-to-face evaluation sessions with a SEAP network provider, per episode (issue), per calendar year. Network providers are licensed at the master's level or higher, and include counselors, social workers, marriage and family therapists and psychologists with a variety of specialties.
- c. Free unlimited use of the telephonic financial consultation service.
- d. Legal services, including:
  - (1) Free unlimited use of the telephonic legal consultation service.
  - (2) Free 30 minute face-to-face session with a local network attorney.
  - (3) Discounted additional face-to-face legal and mediation services with local network attorneys and mediators.

**Note:** SEAP legal services are not available for any employment-related matters.

- 6. Appointments for face-to-face evaluation sessions with a SEAP network provider for routine issues are generally available within three business days; appointments for urgent issues are available within 24 hours, and individuals with emergency issues are seen (either by a network provider or an emergency room) within one hour. SEAP will provide a list of local network providers to the employee or family member, or he/she may utilize the SEAP appointment setting assistance service; the SEAP-CCO will contact network providers to locate an appropriate counselor who is accepting new patients and who has available appointments.
- 7. If continued services are needed beyond the three free evaluation sessions the network provider will work with the employee or family member to construct a clinically appropriate treatment plan to address the pertinent issues. Any costs associated with that treatment plan are the responsibility of the employee or family member.
- 8. The SEAP-CCO conducts telephonic and email follow-up with employees or family members who have used SEAP services. The purpose of follow-up is to monitor progress, assess satisfaction with providers, and to see if additional services may be appropriate. In order for SEAP to conduct follow-up, the employee or family member is required to provide his/her authorization.

**CONFIDENTIALITY.**

- 1. All contacts with SEAP are confidential. All information obtained, including initial phone contact, evaluation, treatment, and follow-up are subject to strict federal and state regulations governing confidentiality. No information will be shared with anyone (including OA-SEAP or the agency) without the written authorization of the employee or family member using SEAP services. Confidentiality policies, rules and regulations include, but are not limited to:
  - a. Federal *Public Law 92-255, Drug Abuse Prevention, Treatment and Rehabilitation Act 21 U. S. C. § 1101 et seq* and §§ 4 and 8 of the *Drug and Alcohol Abuse Act of April 14, 1972*, and *Pennsylvania P. L. 221, No. 63, 71 P. S. §§ 1690.104 and 1690.108.*, set forth specific restrictions concerning the release of information. The federal regulations contain specific penalties for violations of the federal confidentiality regulations.



that report, the SEAP Coordinator would only share those statements which are outside of the confidentiality protection (i.e., the policy violation, the criminal activity, or the self-disclosure).

5. In most cases where an employee chooses to disclose information to his/her supervisor regarding participation in SEAP, the supervisor is required to keep that information confidential, and is not permitted to share that information without written authorization from the employee. The following exceptions apply:
  - a. If an employee shares information indicating he/she is an immediate threat to self or others, the supervisor should immediately contact the agency human resource office for guidance on the appropriate action to ensure the safety of the employee and/or others. This may include facilitating a call to SEAP for the employee, contacting 911, or other appropriate measures.
  - b. If an employee shares information which would constitute a self-disclosure (only for an employee who is covered by a Self-Disclosure policy), the supervisor should contact the agency human resource office for guidance on the appropriate action, which is generally an employer based referral.
6. If an employee wishes the SEAP-CCO to disclose information about his/her participation in SEAP, such as an employer based referral or a SEAP excuse for absence, the SEAP-CCO will obtain a written authorization from the employee which will specify the limited information to be disclosed, the purpose of disclosure, and an expiration date for the authorization. If the SEAP-CCO discloses employee information to the workplace, the authorized recipient of the information is required to keep the information confidential, and is not permitted to re-disclose this information beyond the list of other authorized recipients without the written authorization of the employee.
7. If the workplace receives a subpoena or court order to release records related to SEAP, the agency should immediately contact OA-SEAP.
8. Violations of confidentiality regulations and/or policy by a commonwealth employee may result in discipline, up to and including termination, as well as monetary damages and fines.

#### **TELEPHONIC CONSULTATION FOR MANAGEMENT.**

1. Unlimited telephonic consultation with SEAP is available for supervisors, managers and union representatives who may benefit from receiving support and an objective perspective concerning job-related situations. To assist these individuals in deciding if, when or how to intervene with an employee, SEAP offers consultation services in the following areas:
  - a. How to identify an impaired employee.
  - b. What and how to document.
  - c. How to approach an employee.
  - d. How to motivate an employee to access SEAP.
  - e. How to monitor a situation after a SEAP referral has been made.

- f. How to identify an appropriate course of action if performance/behavior does not improve.
2. The SEAP Management Consultation line is available Monday through Friday, 8:00 a.m. to 6:00 p.m. at 1.800.662.9206.
3. The discussion that the caller has with the SEAP Management Consultation line will not be documented in an employee's SEAP record. The caller will not be provided any information regarding whether or not the employee has utilized SEAP, due to the confidential nature of the information.

## **COMPLAINTS.**

1. To ensure that the quality of SEAP services from the SEAP-CCO and the network providers remains high, OA-SEAP has established a formal complaint procedure. This complaint procedure is to be used whenever an individual is dissatisfied with the service or treatment that he/she has received from SEAP. No information can be released by the SEAP-CCO without a written authorization from the individual who utilized SEAP therefore neither verbal or anonymous complaints will be accepted.
2. Individuals who are dissatisfied with the service they have received from SEAP may contact their agency/field SEAP Coordinator to obtain the appropriate forms to file a SEAP complaint. Individuals who do not wish to involve their agency/field SEAP Coordinator may obtain the [forms on-line](#), or contact OA-SEAP directly at 717.787.8575 or [ra-workplacesupportservices@pa.gov](mailto:ra-workplacesupportservices@pa.gov) to obtain the forms necessary to file a complaint. Upon receipt of the completed forms OA-SEAP will promptly initiate an investigation with the SEAP-CCO, and assist the individual in attempting to resolve the issue.

## **LEAVE AND SEAP EXCUSES FOR ABSENCE.**

**Note:** For procedures related to leave for employer based referrals please see the Employer Based Referral section starting on page 18 of this Manual.

1. An employee who utilizes SEAP on a voluntary basis may need to be absent from work to attend a SEAP appointment(s) with a network provider or a network attorney/mediator. Leave will be charged, and normal policies and procedures for requesting and using leave apply.
2. An employee who needs to be absent from work for ongoing treatment with a network provider may request that the SEAP-CCO send a SEAP Excuse for Absence to the agency/field SEAP Coordinator, rather than the employee obtaining a note directly from the network provider. A SEAP Excuse for Absence is a trigger that indicates the employee may be eligible for FMLA/SPF absence. The FMLA/SPF Coordinator should be notified by the agency/field SEAP Coordinator when a SEAP Excuse for Absence is received so that he/she can notify the employee of his/her eligibility or ineligibility for leave under the FMLA, as well as to notify the employee about the requirement to submit a Serious Health Condition Certification (SHCC) form.
3. A SEAP Excuse for Absence will only be issued by the SEAP-CCO in the following circumstances:
  - a. The employee sees a network provider face-to-face, and

- b. The network provider makes a clinical determination that the employee is unable to work due to his/her behavioral health condition, and
  - c. The employee signs the appropriate authorization to release information forms for the SEAP-CCO and the network provider, and
  - d. The network provider provides clinical documentation to the SEAP-CCO that confirms the employee's need for an absence from work, and
  - e. The employee remains in active treatment with the network provider during the absence from work.
4. An employee who is on a SEAP Excuse for Absence and who exhausts all leave entitlements before being cleared by his/her network provider to return to work should be notified of his/her options, which may be limited and result in an absence without approved leave and ultimately in termination. An employee's use of SEAP on a voluntary basis does not guarantee approved leave in addition to that provided for non-SEAP related absences.

#### **CRITICAL INCIDENT STRESS DEBRIEFING (CISD).**

1. SEAP intervention can be an appropriate resource to the workplace when a traumatic event occurs that affects the workplace. Examples of such incidents include workplace accidents, bomb threats, robberies, workplace deaths, natural disasters, major organizational change, and other similar events that significantly disrupt the workplace.
2. The purpose of a CISD is to assist employees to process their emotional reactions to the event through an education session. CISD's are group sessions which are conducted on-site at the workplace by a SEAP network provider, and participation is voluntary (with the exception of some law enforcement agencies, where participation is mandatory). The session, typically two hours in length, is not counseling. Rather, it is an educational and support process designed to assist the participants in understanding the physical and emotional effects that may result from experiencing a traumatic event. By attending the session, the participants are better equipped to take appropriate steps to stem any adverse effects of the incident. Participants are encouraged to contact SEAP individually if they feel the need for continued services.
3. Supervisors and managers should promptly notify the agency/field SEAP Coordinator when a traumatic event that affects the workplace has occurred and employees are showing signs of being negatively affected. The agency/field SEAP Coordinator will discuss the situation with OA-SEAP to determine the most appropriate course of action.
4. If a CISD appears appropriate, the agency must conduct a survey of interest to determine if employees are interested in attending a CISD; at least two employees must be interested for a CISD to be held. When the topic of the CISD will be a current employee, the agency must ensure that the employee does not object to the CISD.
5. Once approved by OA-SEAP, the SEAP-CCO is notified and services are then coordinated within the workplace. CISD's are not conducted within the first 24 hours after the critical incident; they are most effective within 48 to 72 hours, although they continue to be effective up to 30 days after the event.

## **PART TWO - SUPERVISORY TOOLS**

### **SEAP AS AN EARLY INTERVENTION TOOL.**

1. All employees are encouraged to utilize the services of SEAP when personal problems first develop, regardless of any job performance concerns.
2. During the course of employment, supervisors, managers, and union representatives develop both professional and social relationships with employees, and often witness the subtle and early stages of a problem. The supervisor, manager, or union representative should be supportive but should avoid getting involved in the employee's personal issues, and should encourage the employee to call SEAP.
3. Effective early intervention can occur when a supervisor distributes SEAP brochures and wallet cards, newsletters and other printed materials to employees. Regular discussions during staff meetings are also effective in maintaining employee awareness of SEAP services. Agencies can raise employee awareness of SEAP through posters, health fairs and training.
4. The agency/field SEAP Coordinator is a resource for employees, providing information, support and facilitating referrals; however, he/she does not function as a therapist or counselor.
5. If a concerned coworker, supervisor, or union representative contacts SEAP regarding an employee who may need services, SEAP will not contact that employee, as SEAP is prohibited from initiating contact with an individual who has not personally requested services. SEAP will provide technical assistance to the caller regarding how to motivate the employee to initiate contact.
6. A supervisor, manager, or union representative may facilitate a referral to SEAP with the consent of the employee by placing the call to SEAP for the employee and providing background information. The employee should then be left alone so he/she can discuss his/her concerns with SEAP in private.

### **PERFORMANCE BASED INTERVENTION.**

1. The supervisor, more than any other person in the workplace, has the opportunity to intervene early and assist the employee in obtaining SEAP services to address his/her personal problems. Early intervention through SEAP referrals should begin as the supervisor observes changes in an employee's behavior and job performance, before it is necessary for the supervisor to consider discipline.
2. Consistent with the commonwealth's policy on corrective and progressive discipline, the supervisor should focus on job performance and work-related behavior. When necessary, the supervisor is expected to take the prescribed steps to correct and deter the recurrence of unacceptable performance or behavior. This includes the use of SEAP to assist the employee in restoring his/her performance to acceptable levels.

3. The supervisor should not attempt to diagnose or speculate as to the reason or cause of the problem, or be drawn into such discussions. Rather, the supervisor should remain focused on job performance and work-related behavior and use available SEAP resources. In this capacity, the supervisor is in the position to provide the greatest degree of support and motivation to the employee while meeting his/her responsibilities as a supervisor.
4. For the purposes of SEAP, the union–management relationship is not adversarial, but rather a partnership in effective intervention. The union representative serves to protect the employee's interests on the job. Inherent in this role is the concern for the employee's well-being and the possible consequences of personal problems upon job security. As an advocate for the employee, the union representative can be influential in motivating the employee to seek services available through SEAP.
5. The process where supervisors utilize SEAP referrals in the management of employees is called performance based intervention. It is based on the premise that if an employee has had acceptable performance and/or behavior in the past, is now performing below set standards and job related factors have been ruled out; the employee may be impaired by a personal issue and should be referred to SEAP for professional assistance. The supervisor should approach the employee, using the five steps below to facilitate the effective identification of an impaired employee and to make a SEAP referral.
  - a. **Step 1. Identification of an Impaired Employee.** This first step is to attempt to determine whether the employee is impaired by personal issues or if there are other factors contributing to the performance or behavior problems that the supervisor has observed. The supervisor should use the "Identification Checklist", Appendix A on page 43 to rule out job-related factors. Any job-related factors that are identified should be dealt with using methods outside of a SEAP referral.
  - b. **Step 2. Documentation.**
    - (1) The supervisor should gather documentation for the process to be effective. Prior to gathering the documentation, the supervisor should complete the "Employee Performance/Behavior Checklist", Appendix B on page 44 to identify those areas where documentation should be obtained. Having documentation provides the supervisor with:
      - (a) Objective observations and findings.
      - (b) An opportunity to distinguish between work-related problems and subjective or other personal differences.
      - (c) Validation of the existence of a job performance or behavior problem.
      - (d) Grounds upon which to consider potential disciplinary action.
      - (e) A foundation upon which to conduct an employee constructive interview in a positive and meaningful way.
    - (2) Supervisory documentation should be objective, and may include such things as:
      - (a) Attendance records.

- (b) Work assignments and due dates.
  - (c) Job description, performance standards, and performance evaluations.
  - (d) Instructions/communications issued to the employee.
  - (e) Descriptions of unusual or unacceptable behavior.
  - (f) Notes regarding past interactions with the supervisor and co-workers.
- (3) Supervisory documentation should not include things such as hearsay, opinions, vague statements, and, in most cases, references to events or behavior that have occurred outside the workplace. Further, the documentation should not include attempts to diagnose, label, or make a conclusion about the nature of an employee's possible personal problem.
- (4) Documentation of a performance or behavioral problem should:
- (a) Include specific dates, times, and locations.
  - (b) Include specific descriptions of the nature of incident or performance problem.
  - (c) Cite the policy, procedure, or other work rule which has been violated.
  - (d) If applicable identify witnesses and, as appropriate, obtain signed statements from them.
  - (e) Note the impact of the behavior or problem on the employee's overall work performance and/or on the operation of the unit.
  - (f) Note the past response of the supervisor to the incident or problem.
  - (g) Be recorded at the time of the incident or situation whenever possible.

**c. Step 3. The Constructive Interview.**

- (1) The goals of the constructive interview are to:
- (a) Make the employee aware of his/her below standard performance and/or behavior.
  - (b) Identify acceptable levels in performance and/or behavior.
  - (c) Obtain a mutually understood plan on achieving improvements.
  - (d) Identify the consequences for not achieving acceptable performance and/or behavior.
  - (e) Motivate the employee to contact SEAP if personal issues are impacting his/her performance and/or behavior.

- (2)** In preparing for the constructive interview, it can be helpful to identify some common obstacles that may exist. Once identified, the supervisor can determine the best way to handle the obstacles. The supervisor should ask himself/herself:

  - (a)** Is there a personal friendship with the employee that might be affected by doing my job as a supervisor?
  - (b)** Are there differences in age, gender, race, or culture between myself and the employee that might impact the constructive interview?
  - (c)** Am I a new supervisor of a more experienced workforce?
  - (d)** Am I concerned about a possible grievance or being blamed for mishandling the situation?
  - (e)** Have I or a family member experienced a personal problem that resembles what I think is the employee's problem, which may lead me to pre-judgement?
- (3)** Other preparatory actions for the supervisor to take that will support a positive outcome to the constructive interview include:

  - (a)** Organize and review all documentation related to job performance and behavior and identify what is (and is not) acceptable.
  - (b)** Plan in advance the structure of the session.
  - (c)** Make arrangements to have the constructive interview in a private office or an area that allows sufficient privacy, and allow sufficient time, free of interruption, to complete the interview.
  - (d)** Rehearse the interview and be prepared to respond to anticipated questions or issues.
  - (e)** Prepare and rehearse what you intend to say when making the SEAP referral, and have SEAP information on hand, including SEAP cards and/or brochures.
- (4)** If the constructive interview is being done in conjunction with a pre-disciplinary conference, the supervisor should also consult with the Labor Relations Specialist prior to the interview.
- (5)** During the constructive interview the supervisor should:

  - (a)** Stand and greet the employee (and union representative, if present).
  - (b)** Consider if the desk or seating arrangements serve as a barrier; try to position yourself so there is not a barrier between you and the employee.
  - (c)** Sit straight and maintain good eye contact.
  - (d)** Maintain a firm, formal, yet considerate attitude.

- (e) Explain the purpose of the meeting.
  - (f) Acknowledge the employee's contribution to the work unit.
  - (g) Discuss and present documentation of the employee's poor job performance and/or behavior.
  - (h) Identify your expectations and ask the employee to restate his/her understanding of what constitutes acceptable performance/behavior.
  - (i) Listen carefully to the employee and take the time to explain your statements and answer questions.
  - (j) Paraphrase what you believe the employee to be saying.
  - (k) Explain the SEAP program, its confidentiality, give a SEAP brochure and/or card to the employee, and refer the employee to SEAP.
  - (l) Develop a mutually acceptable plan for improvement.
  - (m) Tell the employee that you will be monitoring his/her job performance/behavior, and if he/she fails to improve, you will follow through on the next level of intervention (which may include discipline).
  - (n) Tell the employee that he/she is not required to inform you if he/she accepts the SEAP referral, and explain that his/her participation in SEAP does not exempt him/her from the requirement to have acceptable work performance and behavior, nor does it protect him/her from receiving discipline.
  - (o) Set up a time and date for a follow-up meeting with the employee at an interval that allows for change, as is reasonable, given the nature of the performance or behavior issue.
  - (p) If the employee is agreeable, call the SEAP hotline, (1.800.692.7459), provide some background information, give the phone to the employee, and then leave the room so the employee can speak with SEAP confidentially.
- (6) The supervisor should not ask the employee to acknowledge the existence of or the nature of a personal problem during the constructive interview. However, the employee may decide to share information about personal problems, including self-disclosing that he/she has a mental health problem or a problem with drugs and/or alcohol. In some specific circumstances a supervisor may need to take additional actions when an employee self-discloses a mental health or substance abuse issue:
- (a) Employees who are part of the CDL Drug and Alcohol Testing program, and who self-disclose a problem with drugs and/or alcohol are covered by federal regulations. Please see "CDL Self-Disclosure Referral" on page 34.
  - (b) Professional employees who are licensed or regulated by the Department of State, and who self-disclose either a mental health issue or a problem

with drugs and/or alcohol are covered by state regulations. Please see "Licensed Professional Referral (LPR)" on page 27.

- (c) Employees who carry weapons or who have care, custody, and control duties, and who self-disclose a problem with drugs and/or alcohol are covered by commonwealth policy, *Management Directive 505.25, Substance Abuse in the Workplace*. Please see "Self-Disclosure Referral" on page 20.
- (7) The supervisor should attempt to avoid the following traps:
- (a) Getting involved in the employee's personal problems. If the employee shares information about his/her personal issues, be empathetic, refer the employee to SEAP, and keep the information about the personal problems confidential.
  - (b) Making value judgments about the employee's beliefs or lifestyle.
  - (c) Believing that you, not the employee, is responsible for his/her behavior and is responsible for correcting the situation.
  - (d) Allowing the employee to compare his/her performance/behavior to other employees. Keep the discussion focused on the employee.
  - (e) Accepting employee promises or deals other than reasonable plans to improve job performance/behavior. If the employee says he/she is in counseling, acknowledge the effort, promise to keep it confidential, and remain focused on developing behavior change at work.
  - (f) Failing to follow through with the actions that the employee was told would be taken.

**d. Step 4. Making the SEAP Referral.**

- (1) It can be difficult to formally refer an employee to SEAP. It may be helpful for the supervisor to write down what he/she intends to say to the employee, and to prepare the SEAP referral statement in his/her own words. The recommended standard language to use can be found in Levels of SEAP Intervention, starting on page 13.
- (2) The supervisor should remind the employee that because SEAP is confidential, SEAP will not disclose any information to the supervisor without a written authorization from the employee. The employee is not obligated to inform the supervisor whether or not he/she contacted SEAP, and the supervisor should not ask the employee to disclose such information.
- (3) SEAP referral language should also be included in any written discipline issued to an employee. The following is the recommended language for disciplinary letters: "Should you be experiencing a personal problem which you feel may have contributed to your actions, we urge you to seek the confidential assistance available through the State Employee Assistance Program (SEAP). You can make arrangements for a referral through your supervisor or by calling 1.800.692.7459 (toll free). This number is in service 24 hours a day. SEAP will

not disclose information to the workplace without your consent. The provision of this information does not indicate, and should not be interpreted to indicate, that the commonwealth regards you as having a disability.”

**e. Step 5. Post-Referral Follow Through.**

- (1) After the supervisor has completed the constructive interview and has formally referred the employee to SEAP, follow through is necessary to determine if the appropriate improvements are being made in job performance and/or behavior.
- (2) The supervisor should schedule and conduct a follow-up meeting with the employee. In preparation, the supervisor should:
  - (a) Repeat the action steps for a constructive interview.
  - (b) Remain sensitive to the degree of change, if any, that the employee has demonstrated.
  - (c) If the employee’s performance and/or behavior have not returned to satisfactory levels, consult with the Labor Relations Specialist prior to conducting the follow-up meeting.
- (3) During the follow-up meeting the supervisor should:
  - (a) Recognize and reinforce positive change.
  - (b) Identify and discuss where improvements are still needed.
  - (c) Make another referral to SEAP.
- (4) The supervisor should continue scheduling and conducting follow-up meetings until the employee’s performance and behavior have returned to satisfactory levels.

**LEVELS OF SEAP INTERVENTION.** Due to the progressive nature of most personal problems, without intervention they will often get worse, as will the visible effects on performance and behavior at work. Performance based intervention can be highly effective in responding to deterioration in job performance or behavior that results from personal problems. There are five levels of SEAP intervention, which get progressively more emphatic, and which generally coincide with progressive discipline. However, because each set of circumstances is unique, a supervisor may skip early levels and go directly to higher levels of intervention as warranted.

**1. First Level - Creating Awareness.**

- a. The intent of creating awareness is to provide information about SEAP to the employee. This level of intervention should occur before formal discipline is required, and frequently occurs as part of corrective counseling for performance or behavior. The supervisor should provide feedback on the observed performance/behavior and give the employee a SEAP brochure or card, explain SEAP services, and answer any questions.

- b. An example of a statement that the supervisor might use would be "I wanted to be sure that you were aware of your SEAP benefits; here's a SEAP brochure for your review."

## **2. Second Level - Suggestion.**

- a. This level of intervention reflects a more assertive approach to making a referral. The suggestion level of intervention generally occurs when the employee is issued an oral reprimand. It has a clear focus on the job performance or behavior which occurred since the last level of intervention, including communicating the pattern which is beginning to develop, and how it contrasts with past performance and/or expectations.
- b. When the supervisor presents the SEAP information, he/she should explain the program and suggest that the employee consider calling SEAP. The supervisor should point out that since other work related efforts have NOT eliminated the job performance or behavior problem, the employee may want to consider SEAP.
- c. The recommended standard language for a SEAP referral at the suggestion level is: "It is possible that personal problems may be contributing to your job performance and/or behavior. I am suggesting that you contact SEAP."

## **3. Third Level - Recommendation.**

- a. The third level of intervention is based on continued failure to improve performance/behavior. Generally, the supervisor recommends SEAP to the employee when he/she is being issued a written reprimand.
- b. The recommendation to contact SEAP is made in a direct fashion with emphasis on the fact that, to date, performance or behavior has not improved. The supervisor should also provide clear direction to the employee as to what is expected in job performance and behavior, and the consequences for not meeting the standards.
- c. The recommended standard language for a SEAP referral at the recommendation level is: "It is possible that personal problems may be contributing to your job performance and/or behavior. I am recommending that you contact SEAP."

## **4. Fourth Level - Strong Urging.**

- a. The fourth level occurs when performance/behavior continues to decline or fails to improve, and the employee is generally facing a suspension. At this point, the supervisor should strongly urge the employee to call SEAP.
- b. The supervisor should be assertive and direct in making the referral, and also in defining the consequences if the employee's job performance and/or behavior do not improve. Strong urging is accompanied by discussion of past efforts, unfulfilled promises, and the continued deterioration that has been documented.
- c. The recommended standard language for a SEAP referral at the strong urging level is: "It is possible that personal problems may be contributing to your job performance and/or behavior. I am strongly urging you to contact SEAP."

## 5. Fifth Level - Employer Based Referrals.

- a. In the previous four levels of intervention the agency was prohibited from taking an adverse employment action if the employee chose not to access SEAP. At this fifth level of intervention there will be an employment related consequence imposed by the agency if the employee chooses not to access SEAP services.
- b. Employer based referrals include:
  - (1) Self-Disclosure Referral.
  - (2) Independent Psychological Evaluation (IPE).
  - (3) Licensed Professional Referral (LPR).
  - (4) Condition of Continued Employment (COCE).
  - (5) Commercial Driver's License Self-Disclosure Referral.
  - (6) Commercial Driver's License Referral (CDL).
  - (7) Agency-Specific Drug and Alcohol Testing Referral.
- c. **All employer based referrals to SEAP require approval by the agency's central human resource office AND OA-SEAP before they are discussed with the employee and/or the union.**

**Note:** Employer based referrals are discussed in greater detail starting on page 18 of this Manual.

## **PART THREE – FITNESS FOR DUTY**

### **FITNESS FOR DUTY.**

1. The commonwealth expects employees to report for work in a condition fit for the proper, competent, and safe performance of their duties. Further, employees are expected to remain fit for duty throughout their scheduled work time.
2. Supervisors are responsible for assessing the fitness for duty of their employees. They should take prompt action to ensure that employees who may be impaired are not allowed to jeopardize the health and safety of others or the operational efficiency of the workplace.
3. An employee is considered unfit for duty if he/she cannot perform assigned duties in a proper, safe, and competent fashion, regardless of the reason. There are a variety of reasons that an employee may appear to be unfit for duty, including but not limited to medical or behavioral health conditions, effects of medications, extreme stress, or impairment by alcohol or drugs.
4. An employee's physical condition, intellectual ability to perform job duties, interpersonal behavior, and judgment are all factors that should be assessed in light of the safety and competency criteria. The "test" for fitness for duty is whether a reasonable and prudent person would consider the employee's observed behavior to be incompatible with the safe and competent performance of his/her duties. If the response to such a question is yes, a reasonable suspicion of unfitness exists.

### **SUPERVISOR PROCEDURES.**

1. Supervisors should follow these procedures when an employee appears to be unfit for duty, with the following exceptions:
  - a. For CDL-covered employees, the supervisor should follow the procedures found in *Manual 505.5, Commercial Driver License Drug and Alcohol Testing and Related Procedures*.
  - b. For employees covered by an agency drug and alcohol testing policy, the supervisor should follow the agency's policy and procedures.
  - c. If the situation constitutes a medical emergency, immediately contact the proper health and emergency services.
2. If another supervisor or manager is available, he/she should be asked to participate in this process; however, the fitness for duty procedures should not be delayed in order to obtain the participation of another supervisor or manager.
  - a. Use the "Visual Observation Checklist" (Appendix C, page 46) to observe the employee in person and document the observations about the employee's appearance, odor, speech and behavior. Each supervisor/manager should observe the employee and complete a separate checklist, if two supervisors/managers are performing an observation.
  - b. Prepare for an interview of the employee. The interview should be conducted in a private area, free of interruptions, so that the privacy of the employee is



## **PART FOUR – EMPLOYER BASED REFERRALS**

### **EMPLOYER BASED REFERRALS.**

1. Employer based referrals to SEAP are used only under limited and very specific circumstances. Employer based referrals are not an alternative to appropriate supervision and performance management. All employer based referrals must be reviewed and approved by OA-SEAP before they can be implemented, and this approval should be received prior to discussion with the employee or union.
2. Whenever an agency is considering an employer based referral, the agency/field SEAP Coordinator should contact OA-SEAP to provide the following information, as applicable:
  - a. Advance Notification Checklist.
  - b. Leave balances and eligibility/entitlement for FMLA/SPF.
  - c. FMLA/SPF SHCC forms and doctor's notes.
  - d. Current and previous discipline records, including pre-disciplinary conference notes and investigatory notes.
  - e. Supervisory file/counseling notes.
  - f. Employee performance reviews.
  - g. Witness statements.
  - h. Visual Observation and Questions for Suspected Fitness for Duty checklists.
  - i. Additional documentation related to the agency's concerns about the employee.
3. After receipt of the information OA-SEAP will engage in a discussion with the agency. If the employer based referral request is not approved OA-SEAP will offer suggestions for alternative strategies for dealing with the issue.
4. No SHCC form is required for an employee who is subject to an employer based referral. The SEAP evaluation and treatment process for employer based referrals establishes that a serious health condition exists for the purposes of FMLA/SPF absence.
5. With the exception of an Independent Psychological Evaluation (IPE), all employee time off work to engage in evaluation and education and/or treatment activities that are part of an employer based referral must be charged to the appropriate form of leave (please see page 23 for information about treatment of employee time off work to participate in an IPE). An employee who exhausts all leave entitlements before being cleared by SEAP to return to work should be notified of his/her options, which may be limited and result in an absence without approved leave and ultimately in termination. The employer based referral process does not guarantee approved leave in addition to that provided for non-SEAP related absences.
6. If an employee has been off the job for an extended period of time while participating in an employer based referral, a return-to-work conference may be appropriate when the employee receives clearance from SEAP to return to the workplace. Participation in a

return-to-work conference typically includes the supervisor and agency/field SEAP Coordinator. The decision to conduct this type of session is generally based upon the seriousness of the job performance problem or behavior that occurred prior to the absence. The purpose of the return-to-work conference is to facilitate the transition of the employee back into the workplace. The discussion focuses on the behavior or performance that was at issue, and the setting of expectations for future behavior/performance.

#### **SEAP COMMUNICATION AND RECORDS.**

1. The information that is shared by the SEAP-CCO regarding an employer based referral with OA-SEAP and the agency is limited to the minimum that is needed to confirm that the employee is in compliance with the employer based referral process. This compliance information includes:
  - a. If the employee contacted SEAP by the date and time prescribed in the employer based referral agreement/letter.
  - b. The date and time of the evaluation appointment(s), and whether the employee kept those appointments.
  - c. If education and/or treatment is being recommended, the type of treatment (e.g., outpatient, inpatient, etc.), the dates of treatment, and whether the employee is in compliance with the treatment recommendations.
  - d. If the employee is non-compliant, the nature and dates of the non-compliance.
  - e. If the employee is discharged from SEAP due to non-compliance.
  - f. When education and/or treatment has successfully concluded.
  - g. If the employer based referral includes a follow-up period, if the employee is being recommended for re-evaluation during that follow-up period, and the results of that re-evaluation (e.g., was additional treatment recommended).
  - h. When the one year follow-up period has successfully concluded.
2. Information that is not shared by the SEAP-CCO with OA-SEAP and the agency includes:
  - a. The name of the evaluator and/or treatment provider(s).
  - b. The employee's diagnosis(es).
  - c. The employee's medical and/or family history.
  - d. Psychological reports or results of psychological testing.
  - e. Results of drug/alcohol testing conducted by the provider(s) and/or treatment program(s).
3. The agency SEAP Coordinator should share the compliance information with the positions identified on the Authorization for Release of Information form, which includes supervisor, labor relations, FMLA/SPF coordinator and union representative, so that all

concerned parties are aware of the status of the employer based referral. When an employee is non-compliant with an employer based referral, these parties should each communicate the importance of returning to compliance with the employee. These authorized recipients are required to keep compliance information confidential, and are not permitted to re-disclose this information without the written authorization of the employee.

4. If an employee files a grievance, civil service appeal, other form of administrative action, or initiates any type of court action regarding the employer based referral, the agency/field SEAP Coordinator may share the employer based referral agreement/letter and compliance reports/letters with the appropriate individuals and should maintain them until the case is resolved.

### **TYPES OF EMPLOYER BASED REFERRALS.**

#### **SELF-DISCLOSURE REFERRAL.**

1. When most employees self-disclose a problem with drugs (illicit or prescription) and/or alcohol, their supervisor will simply refer him/her to SEAP. However, certain employees who self-disclose a problem with drugs and/or alcohol are subject to an employer based referral to SEAP. This includes employees who are required to carry weapons; who have direct responsibility for care, custody and control of inmates, patients, residents or students; who operate a CMV; or who are professionals licensed by the Department of State.
2. The procedures in this section apply only to employees who carry weapons or who have direct responsibility for care, custody and control of inmates, patients, residents or students. There are separate self-disclosure procedures that apply to employees in CDL-covered positions; please see "CDL Self-Disclosure Referral" on page 34. There are also separate procedures that apply to employees who are licensed professionals who self-disclose a problem with drugs and/or alcohol; please see "Licensed Professional Referral" on page 27.
3. An employee may self-disclose a problem with drugs and/or alcohol through a variety of means, including:
  - a. A verbal statement made to a supervisor or human resources office that he/she has a problem with drugs and/or alcohol.
  - b. A call-off from work, stating that the reason is because of a problem with drugs and/or alcohol. This includes stating that he/she is entering a drug and/or alcohol treatment facility.
  - c. A letter or note from a doctor, whether to substantiate an absence or to clear the employee for return to work, identifying drugs and/or alcohol as a diagnosis or the reason for treatment.
  - d. A letter or note from a drug and/or alcohol treatment facility, whether to substantiate an absence or to clear the employee for return to work.
  - e. Information provided on a SHCC form completed by a doctor or treatment facility and provided to request an FMLA/SPF absence.

4. An employee who is subject to a Self-Disclosure Referral is required to contact SEAP, to be evaluated by a drug and alcohol abuse expert, and to successfully complete the course of education and/or treatment recommended by that drug and alcohol abuse expert. The employee is not permitted to return to safety sensitive duties (as defined by the agency) until SEAP has confirmed the employee's successful completion of that recommended course of education and/or treatment. An employee who is covered by an agency drug and/or alcohol testing program is also subject to a return-to-duty drug and alcohol test prior to being permitted to return to work.
5. The Self-Disclosure Referral process is managed by the SEAP-CCO, including the selection of a drug and alcohol abuse expert who will perform the evaluation, scheduling of the evaluation appointment, and identification of education/treatment provider(s), if education and/or treatment is recommended. There is no cost to the employee for the evaluation session(s). The employee is responsible for the cost of any education and/or treatment that is recommended, and may utilize the benefits available under his/her medical/behavioral health plan.
6. The Self-Disclosure Referral process ends when the employee has successfully completed the recommended course of education and/or treatment, or when the employee has separated from employment, whichever occurs first. Participation in any treatment after the employee returns to work is at the discretion of the employee, and no information about this treatment will be shared with the agency.

## 7. Agency Procedures.

- a. If the employee has self-disclosed a drug and/or alcohol problem **and** is covered by an agency reasonable suspicion drug and/or alcohol testing program **and** is currently displaying behavior that would lead the agency to believe that reasonable suspicion exists that the employee is currently under the influence, the employee should be taken for a reasonable suspicion test. If the test result is positive, the consequences associated with that testing program shall be applied. If the test result is negative, the employee shall then be subject to a Self-Disclosure Referral.
- b. If the employee has self-disclosed a drug and/or alcohol problem **and** is covered by an agency reasonable suspicion drug and/or alcohol testing program but **is not** currently displaying behavior that would lead the agency to believe that reasonable suspicion exists that the employee is currently under the influence; **or** the employee is not covered by an agency reasonable suspicion drug and/or alcohol testing program, the following should occur:
  - (1) The agency/field SEAP Coordinator should immediately contact OA-SEAP to provide all appropriate background information, obtain approval for the Self-Disclosure Referral, and prepare all required documentation.
  - (2) The agency should immediately remove the employee from safety sensitive (as defined by the agency) job duties. The agency/field SEAP Coordinator, supervisor and other agency staff, as appropriate, should meet with the employee to present the Self-Disclosure Referral. If requested by an employee in a collective bargaining unit, the agency shall include the union in the meeting, although the union is not a party to the Self-Disclosure Referral. The employee may not unreasonably delay the presentation of the referral by requesting only a specific union representative. Participants in the meeting should be limited to only essential staff.

- (3)** During the meeting the agency should:
  - (a)** Explain the reason the agency is taking this action.
  - (b)** Present and explain the self-disclosure letter, including:
    - 1** That the employee is required to contact SEAP by the identified date and time, which is 24 hours/one business day after presentation of the letter.
    - 2** That the employee must cooperate with the Self-Disclosure Referral process, including attending all scheduled appointments and signing all authorization for the release of information forms.
    - 3** That the employee will not be permitted to return to safety sensitive duties (as defined by the agency) until cleared by SEAP.
    - 4** The consequences to the employee if he/she does not comply with the Self-Disclosure Referral process, including the consequences for failing to sign authorization for the release of information forms.
- (4)** Present and explain the Self-Disclosure Authorization for the Release of Information form and direct the employee to sign it.
- (5)** Explain the absence benefits available and that the cost of any education and/or treatment recommended by SEAP is the responsibility of the employee.
- (6)** Offer to place the call to SEAP for the employee, and then provide privacy for the employee's conversation with SEAP.
- c.** If the employee is not at the worksite, the self-disclosure letter and the required Self-Disclosure Authorization for the Release of Information form should be mailed to the employee by both certified and first class mail. A self-addressed stamped envelope should be included for the employee to return the signed authorization form to the workplace. The agency should also call the employee to explain that the letter is being sent and provide the same information as would have been provided in a face-to-face meeting with the employee.
- d.** The employee is not permitted return to safety sensitive duties (as defined by the agency) until the following has occurred:
  - (1)** The employee contacts SEAP, is evaluated by a drug and alcohol abuse expert, and successfully completes the recommended education and/or treatment program.
  - (2)** SEAP provides the agency with written confirmation that the employee was evaluated and has successfully completed the education and/or treatment recommended by the drug and alcohol abuse expert.
  - (3)** If the employee is covered by an agency drug and/or alcohol testing program, he/she has undergone return-to-duty testing for both drugs and alcohol. The employee must have a verified negative result for drugs and a negative result for alcohol of less than 0.04.

**Note:** An agency may not send an employee for return-to-duty testing until written confirmation is received from SEAP that the employee has successfully completed the recommended education and/or treatment. The SEAP-CCO will strongly encourage the employee to take a voluntary "pre-return-to-duty" drug test, at his/her own expense. If the employee elects to take the voluntary "pre-return-to-duty" drug test, SEAP will not certify the employee for the formal return-to-duty testing until a negative result from the voluntary drug test is verified.

- e. The agency may not impose discipline solely as a result of a self-disclosure by an employee. An employee may not use a self-disclosure in an attempt to avoid a drug and/or alcohol test or to avoid having discipline taken against him/her for a work-related infraction.
- f. An employee who does not comply with the Self-Disclosure Referral process, including failure to sign authorization for the release of information forms, will not be permitted to return to work and the time off work must be charged to the appropriate form of leave.
- g. Information regarding the Self-Disclosure Referral should not be documented in any supervisory file or the employee's OPF/e-OPF. The agency/field SEAP Coordinator will maintain a copy of all written documentation regarding the Self-Disclosure Referral in a locked cabinet, consistent with other medical records.
- h. If the employee successfully completes the Self-Disclosure Referral the agency/field SEAP Coordinator's records should be destroyed one year after the employee has been returned to work. OA-SEAP retains all employer based referral records indefinitely.

#### **INDEPENDENT PSYCHOLOGICAL EVALUATION (IPE).**

1. An IPE is a psychological fitness for duty evaluation that is performed by SEAP. It is used when an agency has significant concern regarding an employee's fitness for duty, but the employee is not at the point of termination. It is intended to determine if significant psychological problems exist which may result in harm to self or others, or which affect the employee's ability to perform his/her assigned duties in a safe and competent manner. Competency is defined as the ability of an employee to perform his/her duties in such a manner that the health and safety of the employee or others is not at risk of being compromised or that the behavior does not significantly disrupt the workplace. This does not include those employees that may be performing at a "needs improvement" or an "unsatisfactory" level due to a lack of training or skills.
2. An IPE is not used:
  - a. For medical fitness for duty issues.
  - b. When agency hasn't taken the appropriate performance management actions to attempt to correct an employee's performance and/or behavior.
  - c. To encourage or require an employee to get treatment, or change his/her behavior.
3. An IPE provides a "snapshot" of an employee's psychological fitness for duty as of the date of the evaluation. When SEAP determines that an employee is fit for duty, this

means that the employee is able to control his/her behavior if he/she chooses to do so. An employee is responsible for remaining fit for duty once he/she returns to work. Employees who continue to experience issues with performance and/or behavior after being found fit for duty by SEAP should be handled using performance management. Approving more than one IPE for an employee during their commonwealth career is rare.

4. An IPE is a direct order issued to an employee instructing him/her to contact SEAP, sign appropriate authorization for the release of information forms, undergo psychological testing and evaluation through SEAP, and receive clearance from SEAP before returning to work. An IPE is considered non-disciplinary. Agencies are encouraged to actively solicit the involvement and support of the union, for employees in collective bargaining units, throughout the process.
5. The IPE process is managed by the SEAP-CCO, including the selection of a psychologist who will perform the evaluation, scheduling of the evaluation and psychological testing appointment(s), and identification of treatment provider(s), if treatment is recommended. There is no cost to the employee for the evaluation session(s) or the psychological testing. The employee is responsible for the cost of any treatment that is recommended, and may utilize the benefits available under his/her medical/behavioral health plan.
6. Once an employee has been presented the IPE letter, he/she may not return to work until he/she has been found fit for duty by SEAP. This includes employees who decline to participate in the IPE process, employees found not fit for duty who decline to participate in recommended treatment, and employees found not fit for duty who obtain a medical clearance from a medical professional other than through SEAP.
7. An employee subject to an IPE is charged regular time worked from when he/she is presented the IPE letter until SEAP makes an initial determination regarding his/her fitness for duty, so long as the employee is cooperating with the process (i.e., calling SEAP timely, attending evaluation appointments, and signing authorization for the release of information forms):
  - a. If SEAP's initial determination is that the employee is fit for duty, paid regular time continues until the agency returns him/her to work.
  - b. If SEAP's initial determination is that the employee is not fit for duty or that the employee cannot return to work until additional evaluation occurs, normal policies for requesting and using leave apply. The period for which regular time worked was charged through the date the agency received the SEAP notification remains unchanged.
  - c. If/when SEAP determines that the employee has completed the required additional evaluation and/or treatment and is fit for duty, the time period from the date of that notification to the agency up to the approved date of return set by the agency will be treated as paid regular time.
  - d. If the employee requests additional time off before returning to work after being cleared by SEAP to return, normal policies and procedures for requesting and using leave apply.

8. If the employee does not contact the SEAP-CCO within the prescribed time period, fails to sign required authorization for the release of information forms, or fails to attend the scheduled evaluation appointment(s), the SEAP-CCO will notify OA-SEAP and the agency. The agency should conduct an investigation and take appropriate administrative action, which could result in the time being changed to absent without leave, scheduling a pre-disciplinary conference, and taking discipline up to and including termination.
9. The IPE process ends when the employee has been found fit for duty, has been found not fit for duty for the foreseeable future, or has separated from employment, whichever occurs first. Participation in any treatment that has been recommended by SEAP after the employee returns to work is at the discretion of the employee, and no information about this treatment will be shared with the agency.

#### 10. Agency Procedures.

- a. The agency supervisor identifies an employee who may be unfit for duty and consults with the agency/field SEAP Coordinator and other appropriate human resources staff to consider potential options, including an IPE.

**Note:** When dealing with a potentially suicidal or homicidal employee, the supervisor should ask additional questions to determine if the employee is an actual and immediate danger to self or others. The supervisor should ask the employee what he/she meant by the statement or action, including asking directly if he/she is thinking of harming him/herself or someone else. If the employee's response is "yes", the supervisor should ask additional questions to determine if the employee has a plan and a means to carry out the threat. If the threat is imminent the appropriate emergency response should be contacted immediately (crisis intervention, police, and/or ambulance). Any consideration of an IPE should be held in abeyance until safety has been established.

- (1) The agency/field SEAP Coordinator should immediately contact OA-SEAP to provide all appropriate background information, obtain approval for the IPE, and prepare all required documentation for review and approval.
- (2) The agency/field SEAP Coordinator, supervisor and other agency staff, as appropriate, meet with the employee to present the approved IPE. If requested by an employee in a collective bargaining unit, the agency shall include the union in the meeting, although the union is not a party to the referral. The employee may not unreasonably delay the presentation of the referral by requesting only a specific union representative. Participants in the meeting should be limited to only essential staff. During the meeting the agency should:
  - (a) Explain the reason the agency is taking this action, i.e., the behavior that the employee has exhibited which has raised concerns about his/her fitness for duty.
  - (b) Present and explain the IPE letter, including that:
    - 1 The contents of the letter constitute a direct order.

- 2** The employee is required to contact SEAP by the identified date and time, which is 24 hours/one business day after presentation of the letter.
  - 3** The employee must cooperate with the IPE process, including attending all scheduled appointments and signing all authorization for the release of information forms.
  - 4** The employee will not be permitted to return to the workplace until cleared by SEAP.
  - 5** The consequences to the employee if he/she does not comply with the IPE process, including the consequences for failing to sign authorization for the release of information forms.
- (3)** Present and explain the IPE Authorization for the Release of Information form, and direct the employee to sign it.
  - (4)** Explain which time will be charged as paid regular time, the absence benefits available, and that the cost of any treatment recommended by SEAP in order to be found fit for duty is the responsibility of the employee.
  - (5)** Offer to place the call to SEAP for the employee, and then provide privacy for the employee's conversation with SEAP.
  - (6)** At the conclusion of the meeting direct and/or escort the employee from the workplace.
- b.** If the employee has already been removed from the workplace, the IPE letter and IPE Authorization for the Release of Information form should be sent to the employee by both certified and first class mail. A self-addressed stamped envelope should be included for the employee to return the signed authorization form to the workplace. The agency should also call the employee to explain that the letter is being sent and provide the same information as would have been provided in a face-to-face meeting with the employee.
  - c.** Once the employee has been removed from the workplace, the agency should take any appropriate safety/security steps, based upon the behavior that resulted in the IPE.
  - d.** Information regarding the IPE should not be documented in any supervisory file or the employee's OPF/e-OPF. The agency/field SEAP Coordinator will maintain a copy of all written documentation regarding the IPE in a locked cabinet, consistent with other medical records.
  - e.** If the employee successfully completes the IPE the agency/field SEAP Coordinator's records should be destroyed one year after the employee has been returned to work. OA-SEAP retains all employer based referral records indefinitely.

## LICENSED PROFESSIONAL REFERRAL (LPR).

1. These procedures apply only to professional employees who are licensed or regulated by the Department of State, Bureau of Professional and Occupational Affairs (licensed professionals). There are 12 professional practice and title Acts which regulate the conduct and licensing of the following groups of professional employees:

Audiologist	Physical Therapy Assistant
Certified Registered Nurse Practitioner	Physician Assistant
Dentist	Podiatrist
Dental Hygienist	Practical Nurse
Licensed Counselor	Psychologist
Marriage and Family Therapist	Registered Nurse
Medical Doctor	Social Worker
Osteopathic Physician	Speech Language Pathologist
Osteopathic Physician Assistant	Teacher of Hearing Impaired
Pharmacist	Veterinarian
Physical Therapist	

2. Language contained in each of the Acts requires "any hospital or health care facility, peer or colleague who has substantial evidence that a professional has an active addictive disease for which the professional is not receiving treatment, is diverting a controlled substance or is mentally or physically incompetent to carry out the duties of his or her license shall make or cause to be made a report to the board..."
3. When the commonwealth has **substantial evidence** (*emphasis added*) that a licensed professional has an active addictive disease or is psychologically unfit for duty, that licensed professional must be reported to the Department of State, unless he/she is actively involved with SEAP. The method by which the commonwealth ensures that the licensed professional is actively involved with SEAP is through the LPR process.
4. An LPR is an agreement which requires the licensed professional to contact SEAP, to be evaluated, to participate in and successfully complete whatever treatment and/or education that the SEAP evaluator recommends, and to participate in a one year follow-up period with SEAP at the conclusion of education and/or treatment. If at any point during that one year follow-up period SEAP determines that the licensed professional should be re-evaluated for potential return to treatment, the licensed professional must cooperate with both the re-evaluation and the return to treatment, if recommended by SEAP. The licensed professional will then start a new one-year follow-up period at the conclusion of that additional treatment.
5. The LPR process is managed by the SEAP-CCO, including the selection of a provider who will perform the evaluation, scheduling of the evaluation appointment, and selection of education and/or treatment provider(s), if treatment is recommended. There is no cost to the licensed professional for the evaluation session(s). The licensed professional is responsible for the cost of any education and/or treatment that is recommended, and may utilize the benefits available under his/her medical/behavioral health plan.
6. The LPR process ends when the licensed professional has successfully completed a full one year follow-up period or has separated from employment, whichever occurs first.

7. A licensed professional who fails to sign an LPR, who separates from employment before the LPR process has ended, or who is discharged from SEAP for non-compliance with the LPR will be reported to the Department of State by their agency.
8. Substantial Evidence. Establishing that substantial evidence exists may be accomplished through:
  - a. A self-disclosure of a problem with drugs and/or alcohol, or with mental health. A licensed professional may self-disclose through a variety of means, including:
    - (1) A verbal statement made to the supervisor or human resources office that he/she has a problem with drugs and/or alcohol or has a mental health issue.
    - (2) A call-off from work, stating that the reason is because of a problem with drugs and/or alcohol, or a mental health issue. This includes stating that he/she is entering a drug and/or alcohol treatment facility or a mental health treatment facility.
    - (3) A letter or note from a doctor, whether to substantiate an absence or to clear the licensed professional for return to work, identifying drugs and/or alcohol, or mental health as a diagnosis or the reason for treatment.
    - (4) A letter or note from a drug and/or alcohol treatment facility or a mental health treatment facility, whether to substantiate an absence or to clear the licensed professional for return to work.
    - (5) Information provided on an SHCC form completed by a doctor or treatment facility and provided to request an FMLA/SPF absence.
  - b. A SEAP determination that a licensed professional who is subject to an IPE is currently not fit for duty.
  - c. A determination by the agency (reference Fitness for Duty, page 16) that a licensed professional is unfit for duty may be considered to be substantial evidence. The agency must discuss their fitness for duty determination with OA-SEAP, who will determine whether it constitutes substantial evidence for an LPR, whether an IPE should be approved, or if some other action should be considered.
  - d. Additional behaviors that may constitute substantial evidence include:
    - (1) Traces of alcohol in a container.
    - (2) Evidence of drugs or drug paraphernalia.
    - (3) Documentation errors related to controlled substances.
    - (4) Disappearance/loss of prescription pads.
    - (5) Criminal charges relating to the possession, sale, use, or delivery of drugs.

(6) Repeated criminal charges/convictions related to driving under the influence (DUI) and/or the consumption of alcohol, or related to DUI with a high rate of alcohol or open containers. Please note that a single criminal charge of DUI is generally not considered to be substantial evidence of an active addictive disease.

e. The determination whether substantial evidence exists must be approved by OA-SEAP.

## 9. Agency Procedures.

a. The agency supervisor identifies a licensed professional who may be impaired and consults with the agency/field SEAP Coordinator and other appropriate human resources staff to consider potential options, including an LPR:

(1) The agency/field SEAP Coordinator should contact OA-SEAP to provide all appropriate background information and discuss whether substantial evidence exists.

(2) If OA-SEAP determines that substantial evidence exists and approves an LPR, the agency/field SEAP Coordinator prepares all required documentation for review and approval.

(3) The agency/field SEAP Coordinator, supervisor and other agency staff, as appropriate, meet with the licensed professional to present the approved LPR. If requested by a licensed professional in a collective bargaining unit, the agency may include the union in the meeting, although the union is not a party to the LPR agreement. The employee may not unreasonably delay the presentation of the referral by requesting only a specific union representative. Participants in the meeting should be limited to only essential staff. During the meeting the agency should:

(a) Explain the reason the agency is taking this action, i.e., what is the substantial evidence upon which the LPR is being based.

(b) Present and explain the LPR agreement and obtain the licensed professional's signature. The explanation should include that:

1 The licensed professional is required to contact SEAP within 72 hours/three business days after signing the LPR.

2 The licensed professional must cooperate with the LPR process, including attending all scheduled appointments and signing all authorization for the release of information forms.

(c) Explain available absence benefits and that the cost of any education and/or treatment is the responsibility of the employee.

(d) Explain the consequences of failing to comply with the LPR process, including the consequences for failing to sign authorization for the release of information forms.

- (e) Present and explain the LPR Authorization for the Release of Information form and direct the licensed professional to sign it.
  - (f) Offer to place the call to SEAP for the licensed professional, and then provide privacy for his/her conversation with SEAP.
- b. The only SEAP documents that are to be in the licensed professional's OPF/e-OPF are the LPR Agreement, the LPR Authorization for the Release of Information form and the written notification from SEAP of the licensed professional's successful or unsuccessful completion of the LPR. If placed in a physical OPF, this information should be placed in a sealed confidential envelope with limited access identified on the outside. SEAP compliance reports are to be maintained by the agency/field SEAP Coordinator separate from the OPF in a locked cabinet, consistent with other medical records.
- c. If a licensed professional employee successfully completes the LPR the employer based referral information will be purged from the OPF/e-OPF at the completion of the one-year follow-up period. The agency/field SEAP Coordinator should retain the records for one additional year before purging them. OA-SEAP retains all employer based referral records indefinitely.

#### **10. Reporting to the Department of State.**

- a. A licensed professional will be reported to the Department of State if he/she:
- (1) Fails to sign the LPR agreement or the LPR Authorization for the Release of Information Form.
  - (2) Resigns in lieu of signing the LPR agreement or the LPR Authorization for Release of Information Form.
  - (3) Fails to call SEAP by the date and time prescribed.
  - (4) Is discharged by SEAP for non-compliance with the LPR agreement, including failure to sign authorization for the release of information forms.
  - (5) Separates employment before completing the LPR agreement (including the one year SEAP follow-up period).
- b. OA-SEAP must be involved in all determinations regarding whether a licensed professional should be reported to the Department of State. It is the agency's responsibility to make the actual report to the Department of State; the form to be used will be provided by OA-SEAP to the agency, and OA-SEAP must review and approve the completed form prior to its submittal to the Department of State.

#### **CONDITION OF CONTINUED EMPLOYMENT (COCE).**

1. A COCE is a last chance agreement in lieu of termination, and can only be implemented when the employee is at the point of termination. A COCE cannot be used at lower levels of discipline (such as suspension) or as a short-cut to getting an employee to access treatment. Because a COCE is a last change agreement, it may occur only once in an employee's commonwealth career.

2. A COCE requires the employee to contact SEAP, to be evaluated, to participate in and successfully complete whatever treatment (if any) that the SEAP evaluator recommends, and to participate in a one year follow-up period with SEAP at the conclusion of treatment. If at any point during that one year follow-up period SEAP determines that the employee should be re-evaluated for potential return to treatment, the employee must cooperate with both the re-evaluation and the return to treatment, if recommended by SEAP. If SEAP recommends that the employee return to treatment, he/she will then start a new one-year follow-up period at the conclusion of that additional treatment.
3. The COCE process is managed by the SEAP-CCO, including the selection of a provider who will perform the evaluation, scheduling of the evaluation appointment, and selection of treatment provider(s), if treatment is recommended. There is no cost to the employee for the evaluation session(s). The employee is responsible for the cost of any treatment that is recommended, and may utilize the benefits available under his/her medical/behavioral health plan.
4. The COCE process ends when the employee has successfully completed a full one year SEAP follow-up period or has separated from employment, whichever occurs first.
5. For employees who are covered by a collective bargaining agreement, the union is required to be a party to the COCE agreement, without regard to whether the employee is a union member or desires to have union representation. In order for the COCE agreement to be executed, both the employee and the appropriate union representative must sign it. While neither the union nor the employee can be directed to sign a COCE, the consequence for either party's failure to sign the COCE, or the employee's failure to sign the COCE Authorization for the Release of Information form, is the employee's immediate termination from commonwealth employment.
6. In those cases where the behavior or conduct of the employee warrants termination, and the *Governor's Code of Conduct* or other agency policy does not mandate termination, the agency may consider whether it wishes to obtain OA-SEAP approval to offer the employee a COCE in lieu of termination. Agencies are not obligated to consider offering a COCE to an employee who is at the point of termination; that consideration is generally reserved for situations where mitigating circumstances exist, such as:
  - a. The employee at one time met or exceeded job standards.
  - b. The employee is permanent and has some length of service; generally agencies would not consider offering a COCE to a probationary or short-term employee.
  - c. Other mitigating circumstances, such as the employee's explanation for the performance/behavior, difficulty filling the position, unique requirements for the position, etc.
7. The COCE agreement is a document to which additional terms cannot be added; an addendum is used for any additional terms the agency wishes to add. An addendum is considered to be a labor relations document, and as such must be negotiated with the union if the employee is covered by a collective bargaining agreement. Standard additional terms in an addendum generally include:
  - a. Level of discipline being imposed in lieu of termination.

- b. Future employment expectations.
  - c. How penalties for violations of the COCE will be determined.
  - d. Limitations on grievances related to the COCE.
  - e. How employees returned to treatment during the follow-up phase will be treated.
  - f. Fitness for duty requirements, if applicable.
  - g. Statement that the agreement resolves all issues without prejudice to either party and sets no precedent.
8. Involvement in the COCE does not bar further discipline and/or termination. The agency may terminate the employee if he/she fails to meet acceptable performance or behavior standards, without regard to the employee's compliance with SEAP recommendations. An employee who is discharged by SEAP for non-compliance with the COCE will be terminated by the agency, without regard to the employee's performance or behavior at work.

**9. Agency Procedures.**

- a. The labor relations staff, in coordination with the agency supervisor, identifies an employee who is at the point of termination, and then consults with the agency/field SEAP Coordinator and other appropriate human resources staff to consider potential options, including a COCE:
  - (1) The agency/field SEAP Coordinator should contact OA-SEAP to provide all appropriate background information and discuss whether a COCE is appropriate. This includes providing documentation which establishes that the appropriate agency authorities have approved the employee's termination.
  - (2) If OA-SEAP determines that a COCE is appropriate, the agency/field SEAP Coordinator should prepare all required documentation for review and approval, including the addendum.
  - (3) The agency/field labor relations coordinator should communicate with the appropriate union representative regarding the COCE and the terms of the addendum.
  - (4) The agency/field SEAP Coordinator, supervisor and the labor relations coordinator meet with the employee and his/her union representative (if covered by a bargaining unit agreement) to present the approved COCE and addendum. Participants in the meeting should be limited to only essential staff. During the meeting the agency should:
    - (a) Explain the reason the agency is taking this action, i.e., why the employee is at the point of termination.

- (b) Present and explain the COCE agreement and addendum, and obtain all required signatures. The explanation should include that:
    - 1 The employee is required to contact SEAP within 72 hours/three business days after signing the COCE.
    - 2 The employee must cooperate with the COCE process, including but not limited to attending all scheduled appointments and signing all authorization for the release of information forms.
    - 3 Explain absence benefits available and that the cost of any treatment is the responsibility of the employee.
    - 4 If the addendum contains a fitness for duty clause, explain that the employee cannot return to work until SEAP has determined that he/she is fit for duty, and that the absence from work must be charged to an appropriate form of leave.
  - (c) Explain the consequences of failing to comply with the COCE process, including the consequences for failing to sign authorization for the release of information forms.
  - (d) Present and explain the COCE Authorization for the Release of Information form and direct the employee to sign it.
  - (e) Offer to place the call to SEAP for the employee, and then provide privacy for his/her conversation with SEAP.
- b. While the employee is participating in the COCE, should his/her job performance or behavior not show improvement, or if additional performance or behavior issues arise, the supervisor should immediately notify the agency/field SEAP Coordinator. The agency/field SEAP Coordinator should also stay in regular contact with the supervisor to keep apprised of the employee's job performance and behavior. The agency/field SEAP Coordinator will share all such information with the SEAP-CCO who will notify the evaluator and/or treatment provider for possible consideration for treatment purposes.
  - c. The only SEAP documents that are to be in the employee's OPF/e-OPF are the COCE Agreement and addendum, the COCE Authorization for the Release of Information form and the written notification from SEAP of the employee's successful or unsuccessful completion of the COCE. If placed in a physical OPF, this information should be placed in a sealed confidential envelope with limited access identified on the outside. SEAP compliance reports are to be maintained by the agency/field SEAP Coordinator separate from the OPF/e-OPF in a locked cabinet, consistent with other medical records.
  - d. If the employee successfully completes the COCE the SEAP information will be purged from the OPF/e-OPF at the completion of the one-year follow-up period. The agency/field SEAP Coordinator should retain the records for one additional year before purging them. OA-SEAP retains all employer based referral records indefinitely.

## **CDL SELF-DISCLOSURE REFERRAL.**

- 1.** Federal regulation *49 CFR Part 382, Section 121* provides specific requirements for both employers and CDL-covered employees in instances where a CDL-covered employee self-discloses that he/she is using controlled substances (except those prescribed by a medical professional and being used as per directions) and/or misusing alcohol. In order to be covered under these self-disclosure procedures, the employee's self-disclosure must occur prior to performing any safety-sensitive function that shift (e.g., prior to reporting for duty), and must not be made in order to avoid testing. If a CDL-covered employee meets these requirements, he/she will be removed from safety-sensitive duties, but will not be subject to discipline or to the referral, evaluation, treatment, and follow-up testing requirements of *49 CFR Part 40*. Reference Manual 505.5, *Commercial Driver's License Drug and Alcohol Testing and Related Procedures*.
- 2.** A CDL-covered employee may self-disclose a problem with drugs and/or alcohol through a variety of means, including:
  - a.** A verbal statement made to the supervisor or human resources office that he/she has a problem with drugs and/or alcohol.
  - b.** A call-off from work, stating that the reason is because of a problem with drugs and/or alcohol. This includes stating that he/she is entering a drug and/or alcohol treatment facility.
  - c.** A letter or note from a doctor, whether to substantiate an absence or to clear the employee for return to work, identifying drugs and/or alcohol as a diagnosis or the reason for treatment.
  - d.** A letter or note from a drug and/or alcohol treatment facility, whether to substantiate an absence or to clear the employee for return to work.
  - e.** Information provided on an SHCC form completed by a doctor or treatment facility and provided to request an FMLA/SPF absence.
- 3.** A CDL-covered employee who is subject to a CDL Self-Disclosure Referral is required to contact SEAP, to be evaluated by a drug and alcohol abuse expert, and to successfully complete the course of education and/or treatment recommended by that expert. The CDL-covered employee is not permitted to return to safety-sensitive duties until SEAP has confirmed the employee's successful completion of that recommended course of education and/or treatment, and the employee has had both a return-to-duty drug test with a verified negative result and a return-to-duty alcohol test with a result of less than .02.
- 4.** The CDL Self-Disclosure Referral process is managed by the SEAP-CCO, including the selection of a drug and alcohol abuse expert who will perform the evaluation, scheduling of the evaluation appointment, and identification of education/treatment provider(s), if education and/or treatment is recommended. There is no cost to the employee for the evaluation session(s). The employee is responsible for the cost of any education and/or treatment that is recommended, and may utilize the benefits available under his/her medical/behavioral health plan.

5. The CDL Self-Disclosure Referral process ends when the CDL-covered employee has successfully completed the recommended course of education and/or treatment. Participation in any treatment after the employee returns to work is at the discretion of the employee, and no information about such treatment will be shared with the agency. The employee will not be subject to follow-up testing upon his/her return to safety-sensitive duties.
6. A CDL-covered employee who fails to successfully complete the CDL Self-Disclosure Referral process cannot be returned to safety-sensitive duties. The agency should conduct an investigation and take appropriate administrative action, including scheduling a pre-disciplinary conference, and taking discipline up to and including termination.

## **7. Agency Procedures.**

- a. The agency/field SEAP Coordinator or CDL Coordinator should contact OA-SEAP to determine whether the information represents a self-disclosure, and if a CDL Self-Disclosure Referral is appropriate:
  - (1) The agency/field SEAP Coordinator should provide all appropriate background information, obtain approval for the CDL Self-Disclosure Referral, and prepare all required documentation.
  - (2) The agency must immediately remove the employee from safety-sensitive duties. The agency/field SEAP Coordinator, supervisor and other agency staff, as appropriate, meet with the employee to present and explain the CDL Self-Disclosure Referral process. If requested by an employee in a collective bargaining unit, the agency shall include the union in the meeting, although the union is not a party to the CDL Self-Disclosure Referral. The employee may not unreasonably delay the presentation of the referral by requesting only a specific union representative. Participants in the meeting should be limited to only essential staff. During the meeting the agency should:
    - (a) Explain the reason the agency is taking this action.
    - (b) Present and explain the CDL Self-Disclosure letter, including that:
      - 1 The employee is required to contact SEAP by the identified date and time, which is 24 hours/one business day after presentation of the letter.
      - 2 The employee must cooperate with the CDL Self-Disclosure Referral process, including attending all scheduled appointments and signing all authorization for the release of information forms.
      - 3 The employee will not be permitted to return to safety-sensitive duties until cleared by SEAP and having both a return-to-duty drug test with verified negative results and a return-to-duty alcohol test with a result of less than .02.
    - (c) Explain the consequences of failing to comply with the CDL Self-Disclosure process, including the consequences for failing to sign authorization for the release of information forms.

- (d) Present and explain the CDL Self-Disclosure Authorization for the Release of Information form and direct the employee to sign it.
- (e) Explain the absence benefits available and that the cost of any education and/or treatment is the responsibility of the employee.
- (f) Offer to place the call to SEAP for the employee, and then provide privacy for the employee's conversation with SEAP.

**Note:** In the case of a verbal statement made while the employee is at the worksite, if the self-disclosure was made after performing safety-sensitive duties that shift or in an effort to avoid testing, the consequences are the same as those for a positive test and the employee is immediately subject to a CDL Referral; please see "CDL Referral" on page 37.

- b. If the employee is not at the worksite, the CDL Self-Disclosure Referral letter and the CDL Referral Authorization for the Release of Information form should be mailed to the employee by both certified and first class mail. A self-addressed stamped envelope should be included for the employee to return the signed authorization form to the workplace. The agency should also call the employee to explain that the letter is being sent and provide the same information as would have been provided in a face-to-face meeting with the employee.
- c. The employee is not permitted return to safety-sensitive duties until the following has occurred:
  - (1) The employee contacts SEAP, is evaluated by a drug and alcohol abuse expert, and successfully completes the recommended education and/or treatment program.
  - (2) SEAP provides the agency with written confirmation that the employee was evaluated and has successfully completed the education and/or treatment program recommended by the drug and alcohol abuse expert.
  - (3) The employee has undergone both a return-to-duty drug and alcohol test and has a verified negative result for drugs and an alcohol result of less than 0.02.

**Note:** An agency may not send an employee for a return-to-duty test until written confirmation is received from SEAP. The SEAP-CCO will strongly encourage the employee to take a voluntary "pre-return-to-duty" drug test, at his/her own expense. If the employee elects to take this voluntary test, SEAP will not certify the employee for the formal return-to-duty test until a negative result from the voluntary test is verified.

- d. The agency may not impose discipline on an employee solely as a result of having made a self-disclosure. An employee may not use a self-disclosure in an attempt to avoid having discipline taken against him/her for a work-related infraction.
- e. An employee who does not comply with the CDL Self-Disclosure Referral process, including failure to sign authorization for the release of information forms, will not be permitted to return to safety-sensitive duties and the time off work must be charged to the appropriate form of leave.

- f. Information regarding the CDL Self-Disclosure Referral should not be documented in any supervisory file or the employee's OPF/e-OPF. The agency/field SEAP Coordinator will maintain a copy of all written documentation regarding the CDL Self-Disclosure referral in a locked cabinet, consistent with other medical records.
- g. If the employee successfully completes the CDL Self-Disclosure Referral the agency/field SEAP Coordinator's records should be destroyed one year after the employee has been returned to work. OA-SEAP retains all employer based referral records indefinitely.

#### **CDL REFERRAL.**

1. Federal regulation *49 CFR Part 40 of The Omnibus Transportation Employee Testing Act of 1991* provides specific requirements for both employers and CDL-covered employees in instances where a CDL-covered employee tests positive (which includes refusals to test and adulterated/substituted specimens) for either drugs or alcohol. The employee must meet those requirements whether or not they retain their commonwealth employment. Reference Manual 505.5, *Commercial Driver's License Drug and Alcohol Testing and Related Procedures*.
2. A permanent CDL-covered employee who tests positive for drugs and/or alcohol for the first time will be offered an opportunity to meet those federal requirements through the CDL Referral process rather than being terminated. The employee may also be subject to discipline per agency policy.
3. A non-permanent employee who tests positive for drugs and/or alcohol for the first time or a permanent employee who has tested positive previously for drugs and/or alcohol will be handled in accordance with his/her agency policy, and may be terminated rather than offered a CDL Referral.
4. The CDL Referral process requires the employee to contact SEAP, to be evaluated by a Substance Abuse Professional (SAP), and to successfully complete the course of education and/or treatment recommended by that SAP. The CDL-covered employee is not permitted to return to safety-sensitive duties until SEAP has confirmed that the SAP has evaluated the employee's compliance with the recommended education and/or treatment, re-evaluated the employee, and determined that the employee may be considered for return to safety-sensitive duties, which may occur before the employee has completed the recommended education and/or treatment. The employee must then have both a return-to-duty drug test with verified negative results and a return-to-duty alcohol test with a result of less than .02.
5. The CDL Referral process is managed by the SEAP-CCO, including the selection of the SAP who will perform the evaluation, scheduling of the evaluation appointment, and identification of education and/or treatment provider(s). There is no cost to the employee for the evaluation session(s). The employee is responsible for the cost of any education and/or treatment that is recommended, and may utilize the benefits available under his/her medical/behavioral health plan.

6. The CDL Referral process ends when the CDL-covered employee has successfully completed the recommended course of education and/or treatment and successfully completed a one-year follow-up period with SEAP or has been separated from commonwealth employment, whichever occurs first. An employee who is discharged by SEAP for non-compliance with the CDL Referral shall be terminated by the agency, without regard to the employee's performance or behavior at work.
7. Under federal regulations the employee will be subject to follow-up drug and/or alcohol testing upon their return to safety-sensitive duties for up to five years, at the recommendation of the SAP. This follow-up testing is separate from the one-year SEAP follow-up period.

**8. Agency Procedures.**

- a. Upon notification that a CDL-covered employee has had a positive drug and/or alcohol test result:
  - (1) The agency must immediately remove the employee from all safety-sensitive duties.
  - (2) The agency/field SEAP Coordinator should provide all appropriate background information, obtain approval for the CDL Referral, and prepare all required documentation.
  - (3) The agency/field SEAP Coordinator, supervisor and other agency staff, as appropriate, meet with the employee to present and explain the CDL Referral process. If requested by a CDL-covered employee in a collective bargaining unit, the agency may include the union in the meeting, although the union is not a party to the CDL Referral agreement. The employee may not unreasonably delay the presentation of the referral by requesting only a specific union representative. Participants in the meeting should be limited to only essential staff. During the meeting the agency should:
    - (a) Explain the reason the agency is taking this action.
    - (b) Present and explain the CDL Referral Agreement, including that:
      - 1 The employee is required to contact SEAP within 24 hours/1 business day.
      - 2 The employee must cooperate with the CDL Referral process, including attending all scheduled appointments and signing all authorization for the release of information forms.
      - 3 The employee will not be permitted to return to safety-sensitive duties until cleared by SEAP and having both a return-to-duty drug test with verified negative results and a return-to-duty alcohol test with a result of less than .02.
    - (c) Explain the consequences of failing to comply with the CDL Referral process, including the consequences for failing to sign Authorization for Release of Information forms.

- (d) Present and explain the CDL Authorization for the Release of Information form and direct the employee to sign it.
  - (e) Explain the absence benefits available and that the cost of any education and/or treatment is the responsibility of the employee.
  - (f) Offer to place the call to SEAP for the employee, and then provide privacy for the employee's conversation with SEAP.
- b. The employee is not permitted to return to safety-sensitive duties until the following has occurred:
  - (1) The employee contacts SEAP, is evaluated by a SAP, successfully completes some or all the recommended education and/or treatment program, and is re-evaluated by the SAP.
  - (2) SEAP provides the agency with written confirmation that the employee was re-evaluated by the SAP and the SAP has cleared the employee for consideration for return to safety-sensitive duties.
  - (3) The employee has undergone both a return-to-duty drug and alcohol test and has a verified negative result for drugs and an alcohol result of less than 0.02. A positive return-to-duty test is treated as a 2<sup>nd</sup> positive test.

**Note:** An agency may not send an employee for a return-to-duty test until written confirmation is received from SEAP. The SEAP-CCO will strongly encourage the employee to take a voluntary "pre-return-to-duty" drug test, at his/her own expense. If the employee elects to take this voluntary test, SEAP will not certify the employee for the formal return-to-duty test until a negative result from the voluntary test is verified.

- c. The only SEAP documents that are to be in the employee's OPF/e-OPF are the CDL Referral Agreement, the CDL Referral Authorization for the Release of Information form and the written notification from SEAP of the employee's successful or unsuccessful completion of the CDL Referral. If placed in a physical OPF, this information should be placed in a sealed confidential envelope with limited access identified on the outside. SEAP compliance reports are to be maintained by the agency/field SEAP Coordinator separate from the OPF in a locked cabinet, consistent with other medical records.
- d. If the employee successfully completes the CDL Referral the SEAP information will be purged from the OPF/e-OPF at the completion of the one-year SEAP follow-up period. The agency/field SEAP Coordinator should retain the records for one additional year before purging them. OA-SEAP retains all employer based referral records indefinitely.

#### **AGENCY-SPECIFIC DRUG AND ALCOHOL REFERRAL.**

- 1. A number of agencies have approved drug and alcohol testing programs. Under these programs, an employee may be tested for drugs and/or alcohol if there is reasonable suspicion that the employee is under the influence of these substances. The following procedures apply to those employees that have tested positive (which includes refusals

and adulterated/substituted specimens) under one of these programs, and who are not terminated under agency policy.

2. The Agency-Specific Drug and Alcohol Referral process requires the employee to contact SEAP, to be evaluated by a drug and alcohol expert, and to successfully complete the course of education and/or treatment recommended by that expert. The employee is not permitted to return to work until SEAP has confirmed that the drug and alcohol abuse expert has evaluated the employee's compliance with the recommended education and/or treatment, has re-evaluated the employee, and determined that the employee may be considered for return to their duties. The employee must then have both a return-to-duty drug test and a return-to-duty alcohol test with negative results.
3. The Agency-Specific Drug and Alcohol Referral process is managed by the SEAP-CCO, including the selection of the drug and alcohol abuse expert who will perform the evaluation, scheduling of the evaluation appointment, and identification of education and/or treatment provider(s), if education and/or treatment is recommended. There is no cost to the employee for the evaluation session(s). The employee is responsible for the cost of any education and/or treatment that is recommended, and may utilize the benefits available under his/her medical/behavioral health plan.
4. The Agency-Specific Drug and Alcohol Referral process ends when the employee has successfully completed the recommended course of education and/or treatment and successfully completed a one-year SEAP follow-up period, or been separated from commonwealth employment, whichever occurs first. An employee who is discharged by SEAP for non-compliance with the Agency-Specific Drug and Alcohol Referral shall be subject to discipline up to and including termination, as per agency policy.
5. The employee may be subject to follow-up testing upon their return to their duties, as per the agency drug and alcohol testing program, at the recommendation of the drug and alcohol abuse expert. This follow-up testing is separate from the one-year SEAP follow-up period.

#### **6. Agency Procedures.**

- a. Upon notification that an employee covered by an agency drug and alcohol testing program has had a positive drug and/or alcohol test result:
  - (1) The agency must immediately remove the employee from all duties.
  - (2) The agency/field SEAP Coordinator should provide all appropriate background information, obtain approval for the Agency-Specific Drug and Alcohol Referral, and prepare all required documentation.
  - (3) The agency/field SEAP Coordinator, supervisor and other agency staff, as appropriate, meet with the employee to present the Agency-Specific Drug and Alcohol Referral agreement. If requested by an employee in a collective bargaining unit, the agency shall include the union in the meeting, although the union is not a party to the referral. The employee may not unreasonably delay the presentation of the referral by requesting only a specific union representative. Participants in the meeting should be limited to only essential staff. During the meeting the agency should:
    - (a) Explain the reason the agency is taking this action.

- (b) Explain the Agency-Specific Drug and Alcohol Referral Agreement, including that:
  - 1 The employee is required to contact SEAP within 24 hours/one business day.
  - 2 The employee must cooperate with the referral process, including attending all scheduled appointments and signing all authorization for the release of information forms.
  - 3 The employee will not be permitted to return to their duties until cleared by SEAP and having both a return-to-duty drug test with a verified negative result and a return-to-duty alcohol test with a result of less than .04.
- (c) Explain the consequences of failing to comply with the Agency-Specific Drug and Alcohol Referral process, including the consequences for failing to sign authorization for the release of information forms.
- (d) Present and explain the Agency-Specific Drug and Alcohol Referral Authorization for the Release of Information form and direct the employee to sign it.
- (e) Explain the absence benefits available and that the cost of any education and/or treatment is the responsibility of the employee.
- (f) Offer to place the call to SEAP for the employee, and then provide privacy for the employee's conversation with SEAP.

b. The employee is not permitted to return to work until the following has occurred:

- (1) The employee contacts SEAP, is evaluated by a drug and alcohol abuse expert, successfully completes some or all the recommended education and/or treatment program, and is re-evaluated by the expert.
- (2) SEAP provides the agency with written confirmation that the employee was re-evaluated by the drug and alcohol abuse expert and he/she has cleared the employee for consideration for return to duties.
- (3) The employee has undergone both a return-to-duty drug test and a return-to-duty alcohol test with negative results. A positive return-to-duty test is treated as a 2<sup>nd</sup> positive test.

**Note:** An agency may not send an employee for a return-to-duty test until written confirmation is received from SEAP. The SEAP-CCO strongly encourages the employee to take a voluntary "pre-return-to-duty" drug test, at his/her own expense. If the employee elects to take this voluntary test, SEAP will not certify the employee for the formal return-to-duty test until a negative result from the voluntary test is verified.

c. The only SEAP documents that are to be in the employee's OPF/e-OPF are the Agency-Specific Drug and Alcohol Referral Agreement, the Agency-Specific Drug and Alcohol Referral Authorization for the Release of Information form and the written

notification from SEAP of the employee's successful or unsuccessful completion of the referral. If placed in a physical OPF, this information should be placed in a sealed confidential envelope with limited access identified on the outside. SEAP compliance reports are to be maintained by the agency/field SEAP Coordinator separate from the OPF in a locked cabinet, consistent with other medical records.

- d.** If the employee successfully completes the Agency-Specific Drug and Alcohol Referral the SEAP information will be purged from the OPF/e-OPF at the completion of the one-year SEAP follow-up period. The agency/field SEAP Coordinator should retain the records for one additional year before purging them. OA-SEAP retains all employer based referral records indefinitely.

## APPENDICES

### APPENDIX A - IDENTIFICATION CHECKLIST

\_\_\_\_\_  
Employee Name

\_\_\_\_\_  
Supervisor Name

\_\_\_\_\_  
Date

***Respond to each of the questions by placing an "X" next to "yes" or "no."***

YES    NO

- Does the employee have the qualifications (skills and abilities) to perform the assigned duties?
- Has the employee been properly trained to perform his/her duties?
- Does the employee have the necessary work-related resources to perform the assigned duties?
- Is there sufficient time and/or staffing available for the employee to perform the assigned tasks?
- Does the employee understand what is expected of him/her?
- Does the employee have and understand his/her job standards?
- Has the pattern of the performance problem, marginal or otherwise, been persistent over time?
- Has the employee ever functioned at acceptable levels?
- Has the employee been warned repeatedly about the specific performance problem(s)?
- Have clear expectations for improvement been made known to the employee?
- Has the employee been more closely supervised including the review of work assignments and progress?

If you have answered "no" in response to any of the above questions, there may be the possibility that the problem can be corrected in the workplace by addressing that specific issue.

If you answered "yes" to all of the above questions, then it is more likely that you may be dealing with an employee impaired by a personal issue.

## APPENDIX B - EMPLOYEE PERFORMANCE/BEHAVIOR CHECKLIST

\_\_\_\_\_  
Employee Name

\_\_\_\_\_  
Supervisor Name

\_\_\_\_\_  
Date

### TIME AND ATTENDANCE

- Excessive use of sick leave (not covered by FMLA/SPF)
- Repeated unscheduled absences or tardiness
- Pattern of absences involving Mondays, Fridays, before or after holidays, around paydays or when critical work assignments are due
- Leaves work early for a variety of reasons
- Extended lunch periods and breaks
- Disappears from worksite for unknown reasons
- Frequent non work-related trips away from the work area.
- Malingering

### QUALITY AND QUANTITY OF WORK

- Consistent low productivity
- Alternating periods of high and low productivity
- Makes excessive mistakes
- Makes poor judgments and/or decisions
- Misses deadlines
- Wastes materials used on the job
- Slow at starting or completing work assignments
- Continued failure to follow established office procedures

### ATTITUDE AND MOOD

- Periods of high then low morale
- Overreaction to criticism
- Avoids talking with supervisor regarding work issues
- Difficulty in dealing with complex tasks or directions
- Difficulty remembering directions or details
- Mood changes after lunch or break
- Verbal or physical threats directed at self or others
- Bizarre, extreme, or unacceptable behavior at the worksite
- Increasingly withdrawn
- Frequent and unwarranted periods of crying or laughter

**RELATIONSHIPS WITH OTHERS**

- Poor relationships with co-workers
- Complaints from co-workers
- Complaints from outside sources – the public and/or other agencies
- Avoids fellow employees and supervisor

**PHYSICAL APPEARANCE**

- Deterioration of personal appearance/personal hygiene
- Increased nervousness and shakiness
- Changes in appearance after lunch or break

**ACCIDENTS**

- Increased number of accidents on or off the job

**OTHER CONCERNS (LIST)**

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## APPENDIX C - VISUAL OBSERVATION CHECKLIST

\_\_\_\_\_  
Employee Name

\_\_\_\_\_  
Date

*Circle pertinent items based on your observation of the employee.*

<b>1. WALKING/ STANDING</b> normal	stumbling staggering holding on	swaying poor balance impaired coordination	falling unsteady
<b>2. SPEECH</b> normal	shouting slow	whispering rambling/incoherent	silent slurred
<b>3. EYES</b> normal	bloodshot dilated/constricted	watery droopy	glassy closed
<b>4. FACE</b> normal	flushed	pale	sweaty
<b>5. APPEARANCE/ CLOTHING</b> normal	unruly partially dressed stains on clothing	messy bodily excrement stains	dirty
<b>6. BREATH/SMELL</b> no odor	faint alcoholic odor strong perfume/cologne	alcoholic odor	
<b>7. MOVEMENTS</b> normal	fumbling hyperactive	jerky tremors/shakiness	slow nervous
<b>8. EATING/CHEWING</b> none	gum	candy	mints
<b>9. DEMEANOR</b> normal	sleepy talkative suicidal (expressed) apathetic	crying excited anxious lethargic	silent hostile sad nauseous
<b>10. ACTIONS</b> normal	threatening hyperactive poor judgment overreactions	argumentative profanity belligerent resisting communications	drowsy erratic fighting
<b>11. COGNITIVE</b> normal	memory deficits preoccupation incoherence marked suspiciousness	confusion disorientation hallucinations inability to concentrate	dizziness

**OTHER OBSERVATIONS**

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Signature

Date

Time

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Witness

Date

Time



