

§ 40.285 When is a SAP evaluation required?

(a) As an employee, when you have violated DOT drug and alcohol regulations, you cannot again perform any DOT safety-sensitive duties for any employer until and unless you complete the SAP evaluation, referral, and education/treatment process set forth in this subpart and in applicable DOT agency regulations. The first step in this process is a SAP evaluation.

(b) For purposes of this subpart, a verified positive DOT drug test result, a DOT alcohol test with a result indicating an alcohol concentration of 0.04 or greater, a refusal to test (including by adulterating or substituting a urine specimen) or any other violation of the prohibition on the use of alcohol or drugs under a DOT agency regulation constitutes a DOT drug and alcohol regulation violation.

§ 40.287 What information is an employer required to provide concerning SAP services to an employee who has a DOT drug and alcohol regulation violation?

As an employer, you must provide to each employee (including an applicant or new employee) who violates a DOT drug and alcohol regulation a listing of SAPs readily available to the employee and acceptable to you, with names, addresses, and telephone numbers. You cannot charge the employee any fee for compiling or providing this list. You may provide this list yourself or through a C/TPA or other service agent.

§ 40.289 Are employers required to provide SAP and treatment services to employees?

(a) As an employer, you are not required to provide a SAP evaluation or any subsequent recommended education or treatment for an employee who has violated a DOT drug and alcohol regulation.

(b) However, if you offer that employee an opportunity to return to a DOT safety-sensitive duty following a violation, you must, before the employee again performs that duty, ensure that the employee receives an evaluation by a SAP meeting the requirements of § 40.281 and that the em-

ployee successfully complies with the SAP's evaluation recommendations.

(c) Payment for SAP evaluations and services is left for employers and employees to decide and may be governed by existing management-labor agreements and health care benefits.

§ 40.291 What is the role of the SAP in the evaluation, referral, and treatment process of an employee who has violated DOT agency drug and alcohol testing regulations?

(a) As a SAP, you are charged with:

(1) Making a face-to-face clinical assessment and evaluation to determine what assistance is needed by the employee to resolve problems associated with alcohol and/or drug use;

(2) Referring the employee to an appropriate education and/or treatment program;

(3) Conducting a face-to-face follow-up evaluation to determine if the employee has actively participated in the education and/or treatment program and has demonstrated successful compliance with the initial assessment and evaluation recommendations;

(4) Providing the DER with a follow-up drug and/or alcohol testing plan for the employee; and

(5) Providing the employee and employer with recommendations for continuing education and/or treatment.

(b) As a SAP, you are not an advocate for the employer or employee. Your function is to protect the public interest in safety by professionally evaluating the employee and recommending appropriate education/treatment, follow-up tests, and aftercare.

§ 40.293 What is the SAP's function in conducting the initial evaluation of an employee?

As a SAP, for every employee who comes to you following a DOT drug and alcohol regulation violation, you must accomplish the following:

(a) Provide a comprehensive face-to-face assessment and clinical evaluation.

(b) Recommend a course of education and/or treatment with which the employee must demonstrate successful compliance prior to returning to DOT safety-sensitive duty.

(1) You must make such a recommendation for every individual who