



# KANSAS

JACK RICKERSON, DIRECTOR

DEPARTMENT OF ADMINISTRATION  
DIVISION OF PERSONNEL SERVICES

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## MEMORANDUM

**TO:** Agency HR Directors  
**FROM:** Jack Rickerson  
**DATE:** June 21, 2005  
**SUBJECT:** Fitness for Duty Program Proposal

Attached is a copy of the issue paper/proposal sent to the Cabinet that recommends the modification of our contract with our LIFELINE vendor, AlternativesEAP, to establish a formal program to provide interventions for employee who may be a danger to themselves or others.

We advised the Cabinet that this proposal is the result of needs identified by agency HR directors; that we believe there are compelling arguments for the program we propose; that the program will provide quality interventions; that we would be getting the best deal for the monies we have to spend; and that the cost of the program, with the exception of the cost for the administrative leave described in the proposal, can be managed by the state's HEALTHQUEST Program's current budget. We also advised the cabinet that the details of this program would be discussed with the HR directors before there is any implementation action.

We received only favorable responses and now submit this proposal to you for final comment. We recommend that you talk with your appointing authority and/or management team about this issue before responding. We will appreciate hearing back from you no later than July 1.

Please submit your comments to Spud Kent. Please call Spud at (785) 296-4084 if you have questions. Thanks.

JER:hr

Attachments

**HEALTHQUEST FITNESS FOR DUTY PROGRAM**  
**Issue Paper and Proposal**  
**July, 2005**

**Issue to be Addressed**

We increasingly hear about situations in which employees exhibit behaviors that pose a threat to themselves, co-workers, and customers in the work place. The consequences of the school tragedies at Columbine and Red Lake are grim reminders that similar tragedies can happen anywhere. As an employer, we have the responsibility to recognize behaviors in employees that signal potentially dangerous situations, and the resources and ability to react in a swift but fair manner. We also want to make every effort to preserve our investment in those employees who have served us well, but have encountered personal difficulties that have gotten out of control.

**Existing Options**

The State of Kansas has not had a specific program that agencies could access when dealing with a potentially dangerous employee. Historically, state agencies have not given employees a mandatory referral to LIFELINE, the employee assistance program, except in the case of employees who fail drug tests. Options for dealing with employees who exhibit threatening behavior have largely been limited to “suggesting” that they contact the EAP or initiating the progressive disciplinary process. We know that some of our state agencies, on their own, have intervened and proactively assisted employees in a limited number of these instances. However, this has been at a considerable cost and agency time because agencies, with limited experience and expertise in these types of situations, have had to arrange for and pay professionals to diagnose and treat the troubled employees and manage the process of the employee’s return to work.

In response to agency requests to HealthQuest staff during the past year, we asked AlternativesEAP, the vendor that administers the LIFELINE program, to manage six incidents dealing with employees who exhibited acute and potentially dangerous behavior in the work place. These were situations in which the agencies involved did not believe the employee would contact LIFELINE on their own. In each case, the employee was released from work and given a mandatory referral to LIFELINE. AlternativesEAP, in turn, immediately arranged for the employee to follow a step-by-step, deadline-based protocol that included psychological or psychiatric testing and evaluation, treatment plan development, and ultimately a fitness for duty release for return to work. In most cases, the time period between release from work and return to work was less than 30 days.

**Proposal**

The Division of Personnel Services believes that because of the increasing frequency of these occurrences, the state should put a program in place to relieve agencies of the financial burden and to provide consistent case management and return to

work policies. As we considered our options, we contacted AlternativesEAP, because of their success in providing counseling services to employees when self-initiated. It seemed reasonable that they would manage mandatory referrals with the same expertise and that it would be advantageous, due to our relationship with this vendor, and cost effective to expand an existing contract. We have worked with them for several months to develop a program that meets our goals.

We propose to formalize this service and amend our existing contract with AlternativesEAP to include the cost of these services for up to 15 cases per year. The HealthQuest program would bear this cost of \$14,250. Any additional cases beyond the 15 would be paid by the referring agency at a cost of \$1,200 each. If we do enter into an agreement, AlternativesEAP would not charge agencies for the six cases they have already handled, nor would the six cases count toward the 15 per year. We consider this to be a real bargain.

The advantage in using this service offered by our vendor is that it already has in place a *managed* network of diagnosticians and caregivers who will see employees quickly, analyze their situations, and develop treatment plans that we consider to be cost effective. The program we are proposing is not designed to address employees with chronic disciplinary or work performance problems, but rather employees who exhibit sudden behavioral changes and who pose a potential threat to themselves or others in the work place.

### **Other Considerations**

In order to administer this program within the requirements of federal law and state regulations, and to be fair and consistent, matters such as FMLA compliance, accounting for time away from work, and fitness for return to work must be considered. These issues have been addressed in the attachment entitled “State of Kansas Fitness-for-Duty Referrals.” This attachment may be used as a guide for Human Resource Managers when using this program. In brief, we are proposing that employees who are relieved from duty and receive a mandatory referral to the EAP under the conditions of this program, be placed on administrative leave pending a decision on FMLA certification. After that, employees would be required to use accrued leave time or compensatory time. Administrative leave costs fall to the agency.

Given the requirements of the FMLA, we believe the safest approach, to ensure we do not violate federal law in these instances, is to initially grant administrative leave. Our limited experience indicates that FMLA determinations can be made within seven calendar days, the equivalent of five working days. While we would need more experience to see if determinations can continue to be made within that timeframe, we cannot imagine a circumstance that would require more than ten working days of administrative leave.

If we move ahead with this program, we would track and report on the use of administrative leave. We could always turn to the other option, having the employee use

his or her accumulated leave or be placed on leave without pay, if the use of administrative leave becomes too burdensome. However, again, there are greater risks with that option.

### **Summary**

The LIFELINE Fitness for Duty program sponsored by HealthQuest would be an important employee assistance program capability. It provides a distinct advantage to agencies that experience the type of employee incidents that qualify for this program because the initial cost of professional help is arranged and paid for by HealthQuest, and managed by a vendor with expertise in this area. The managed care aspect helps get the employee back to work as soon as possible and it benefits employees because it provides them with the opportunity to get needed help at a time when they may not be inclined to seek help on their own. While we hope that situations this program addresses are infrequent, the program would be a valuable resource that would provide needed help to employees, their agencies, and the State of Kansas.

### **Next Steps**

We believe the Cabinet's response to this proposal would be representative of the response from the heads of all state agencies. We ask that you review this program and provide comments, including your thoughts on whether or not administrative leave should be granted. If you support the program we are recommending, we will forward this information to agency HR managers for review and comment. If there are no objections from the HR managers, we would proceed with modifying the contract with AlternativesEAP and implementing the program.

# **State of Kansas Fitness-For-Duty Referrals**

## **Procedures for Agencies**

### **July, 2005**

This program is not designed to address chronic disciplinary problems, but sudden behavioral changes in employees that may pose a potential threat to self or others in the work place.

1. The Agency Human Resources Director contacts the HealthQuest representatives to discuss the case and initiate coordination with LIFELINE. The LIFELINE vendor, AlternativesEAP, will also provide consultation if requested. The facts of the case will be evaluated to determine if they meet the criteria for the Fitness for Duty program and the agency will be advised on how to proceed. Generally, these criteria may include, but are not limited to:
  - Suicidal statements or behaviors, or personal expressions of mental instability.
  - Statements or behaviors, or personal expressions that would indicate potential violence toward supervisor, co-workers or customers.
  - One or more comments or complaints, whether from within the Agency or external, regarding the use of inappropriate physical or verbal conduct, or any conduct indicating an inability to exercise self-control and self-discipline.
  - An abrupt and negative change in customary behavior, such as irrational verbal, physical, or emotional actions including delusions, hallucinations, or impulsiveness that poses a threat to the work place environment.
2. If the case meets one or more of the criteria, the Agency HR Director should then contact the Vice President of Clinical Services at AlternativesEAP with the employee's name and pertinent background information which would include information relating to the specific instance that triggered the referral. .
3. The Agency HR Director will relieve the employee from duty and instruct the employee to call LIFELINE within 24 hours to make an appointment. The Agency HR Director should inform the employee that he or she cannot return to work without a Fitness for Duty statement issued by the health care provider.

The Agency HR Director should also make a preliminary determination as to whether the employee meets employment eligibility criteria for FMLA at this time. If he or she does:

- Assume that the employee meets medical criteria for FMLA, and issue FMLA medical certification forms.
- Inform the employee that he or she is released from duty until a certification for fitness for duty is received.
- Do not tell the employee he or she has a medical condition or mental health condition – that will be for the health care professionals to decide.
- Do not contact any of the employees' health care providers or providers chosen by the EAP at any time.
- Tell the employee that he or she will be on administrative leave until a determination is made regarding FMLA certification. After that, the employee will have the options of using accrued VL, SL, DD, compensatory time. If the employee has no

accrued leave, LWOP will be used until a fitness for duty certification is received from LIFELINE.

If the employee does not meet employment eligibility for FMLA, he or she is given a mandatory referral to AlternativesEAP to manage the process.

4. While an employee is relieved from duty:

- An employee, whether exempt or non-exempt, who receives a mandatory referral to AlternativesEAP will be placed on administrative leave to cover the time that may be required to complete diagnostic testing, and treatment plan development.
- The agency's policy on use of leave during FMLA would begin at the time the employee is determined to have an FMLA qualifying event.
- The employee will not be allowed to return to work until a Fitness for Duty certification is provided. If it is an FMLA qualifying event and the employee is using his or her own health care provider, the agency cannot request a second opinion on the fitness for duty statement..

The Agency HR Director should remind the employee that any long-term or follow-up participation in any treatment, or related counseling program will be at the employee's expense unless the employee is entitled to such benefits under the terms of the State's group health plan or by other available benefits. The cost of the initial evaluation that the employee is required to receive will be covered under contract by Lifeline (statewide up to 15 cases per year). Any cases beyond 15 will be borne by the referring agency at a cost of \$1,200 each.

4. When the employee calls, LIFELINE will help schedule the employee as soon as possible. Appointments are made within two business days, often the same day if the employee calls by noon. If the employee hasn't called within 24 hours, the Agency HR Director will be notified and disciplinary action may be initiated.
5. The local EAP counselor will conduct an in-depth, comprehensive face-to-face assessment and clinical evaluation to determine what action(s) should be taken to resolve the problems associated with the referral. This initial evaluation typically takes one or two visits.
  - a) When the evaluation is completed, AlternativesEAP will contact the Agency HR Director to discuss whether a treatment plan has been developed and the employee's participation in the plan. AlternativesEAP will provide a confirmation letter to the Agency HR Director.

The Lifeline vendor will keep the HealthQuest staff apprised of progress and when the employee is expected to be able to return to work.

9. Usually, another employee visit is required to document the employee's agreement with the action plan and follow-up/support visits.
10. The local EAP counselor provides face-to-face follow-up and monitoring of the employee's progress. Based on the nature of the case, the monitoring and support phase of the Care Management process lasts from three (3) to twelve (12) months.