

**INDIANA
WORKFORCE
RECOVERY**



INDIANA SUBSTANCE USE TREATMENT LAW

HEA 1007: EMPLOYER GUIDELINES

May 2019

PRESENTED BY



Indiana Substance Use Treatment Law HEA 1007

Employer Guidelines

May 2019

Provided by:

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This publication is available from:

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Indiana Workforce Recovery, an initiative of the Indiana Chamber of Commerce and the Wellness Council of Indiana, is pleased to partner with the state of Indiana and the Commission to Combat Drug Abuse to present this set of employer guidelines.

In the 2018 legislative session, the Chamber and the Wellness Council were proud to support the passage of House Enrolled Act 1007. This legislation was crafted to incentivize and assist employers in the creation of a best-practice second-chance program for applicants and incumbent workers who are qualified for work but test positive on a drug screen.

At a time when workforce development is cited as a top concern for Indiana businesses, an individual who fails a drug test for the first time is as likely to be terminated as he or she is to be directed to treatment and/or appropriate education. The implementation of a best-practice second-chance program guides employers to appropriate next steps while providing important assistance to individuals in need. With this in mind, the state of Indiana, through Next Level Recovery and the Indiana Family and Social Services Administration (FSSA), provided a grant to Indiana Workforce Recovery in order to build out a process for employers to follow.

The Indiana Workforce Recovery initiative was founded specifically to support businesses in building solutions to the opioid epidemic in their workplace and community. At the same time, this provides an opportunity for individuals to gain or retain the employment they need as part of their recovery effort.

Indiana is the only state in the country to have a robust, business-led initiative of this type. The program is built with the input of Indiana businesses for Indiana businesses. The process provided in these guidelines, when implemented, will represent a significant step forward for your company's ability to hire and retain individuals in need of help. The state of Indiana, through FSSA, will be administering this program and directly working with Indiana Workforce Recovery and Indiana employers to assist with implementation.

Technical assistance will be available to any business requesting further help with implementation of this program. This is one step of many available to your business. We encourage you to connect with Indiana Workforce Recovery and Next Level Recovery to learn more about additional business and community solutions, including a series of educational events scheduled from fall 2019 through spring 2020.

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About Indiana Workforce Recovery

The Indiana Chamber of Commerce, the Indiana Chamber Foundation, and the Wellness Council of Indiana are teaming up to address the opioid epidemic, with a goal to promote workplace substance misuse awareness, prevention, early intervention, treatment and recovery. This initiative will improve workplace safety, reduce the prevalence of substance use disorder (SUD) in Indiana workplaces, and help employees struggling with addiction to achieve recovery and return to the workplace as productive employees. This effort will coordinate and align resources with Governor Holcomb's strategic approach to addressing substance abuse in Indiana.



About the Indiana Chamber

The Indiana Chamber of Commerce works to cultivate a world-class environment that provides economic opportunity and prosperity for the people of Indiana and their enterprises. Through partnerships with more than 25,000 members and investors, representing over 4 million Hoosiers, it is the largest broad-based business advocacy group in the state, representing businesses of all types and sizes throughout Indiana.



About the Wellness Council of Indiana

The Wellness Council of Indiana is a 501(c)(3) organization and is the only statewide not-for-profit specifically dedicated to worksite wellness and community well-being in Indiana. Organized as a volunteer-based association in 1988 and acquired by the Indiana Chamber of Commerce in 2011, the Wellness Council of Indiana has grown to be one of the largest state councils in the United States. As a wholly-owned subsidiary of the Indiana Chamber, the Wellness Council continues to grow and offer workplaces and communities a best-of-class blueprint for success.



About the Indiana Family and Social Services Administration

FSSA is a health care and social service funding agency with six care divisions serving more than 1 million Hoosiers per year. Ninety-four percent of the agency's total budget funds numerous initiatives through the help of thousands of service providers ranging from major medical centers to a therapist working with a child or adult with co-occurring disorders. FSSA's mission is to compassionately serve Hoosiers of all ages and connect them with social services, health care and their communities.



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Introduction

About Indiana's House Enrolled Act 1007 (HB 1007)

The state of Indiana enacted the House Enrolled Act 1007 of 2018 (HB 1007) to assist employers with the tools and incentives needed to adopt and implement a best-practice, second-chance system and protocols for:

- any **employment candidate** qualified for employment with the employer and who, following a conditional offer of employment, tests positive on a pre-employment drug test; and
- any **currently employed individual** who tests positive on an alcohol or drug test.

To assist employers with qualifying employees who agree to participate in a drug education and/or addiction treatment program (program), the state has established the following best-practice guidelines.

Not only will adoption of these guidelines increase the number of employable individuals in Indiana, the law provides that if an employee and employer comply with these best-practice guidelines, the employer can avoid liability in a civil action alleging negligent hiring due to the negligence of the employee. To realize this protection and benefits, the employer must implement a standardized system.

Participation is voluntary, and employers are required to assist in measuring these efforts by collecting information for an annual report.

In addition to these guidelines, the Indiana Chamber, Wellness Council of Indiana, and the state of Indiana are also providing the toolkit, "THE RIGHT DOSE: Supporting Your Workforce, Managing Your Risk Against Opioids," a six-module training video with informational resources for employers choosing to take advantage of the protections provided under this law.

To review Indiana's House Enrolled Act of 1007 in its entirety, visit:

www.iga.in.gov/legislative/2018/bills/house/1007.

To access "THE RIGHT DOSE," visit:

www.wellnessindiana.org/the-right-dose.

Substance Use Disorder: Patterns of symptoms resulting from the use of a substance that you continue to take, despite experiencing problems as a result.¹

¹ Source: DSM 5.

Introduction

Part 1

Adopting a Second-Chance System

Employers have an ethical and legal responsibility to provide a healthy and safe work environment for their employees, and substance misuse and untreated substance use disorder (SUD) can threaten that obligation. It is in an employer's best interest, then, to protect their workplace and workforce with practical measures that help prevent and respond to employee substance misuse and SUD. With science-based understanding of these behavioral health conditions, employers can establish a second-chance system that will enable them to identify, intervene and position the company and the employee for continued, healthy and productive employability.

SUD, once thought of as a product of moral weakness, is now recognized by the Substance Abuse and Mental Health Services Administration (SAMHSA) as a manageable business risk. The disorder is both progressive and chronic and can progress from substance misuse. Therefore, earlier problem identification and confrontation is optimal. According to such entities as the National Institute on Drug Abuse (NIDA) and the American Society of Addiction Medicine (ASAM) – along with SAMHSA – SUD is a treatable disorder/disease. It is a disease that – with proper diagnosis, along with behavioral and sometimes medical management – can be as harmless to productive employment as properly managed diabetes or other chronic health conditions.

To learn more about SUD, review MODULES 5 and 6 of "THE RIGHT DOSE."

Offering a Second Chance Within a Comprehensive Drug-Free Workplace Program

A second-chance system is best positioned when integrated within a legally sound, best-practice drug-free workplace (DFWP). A comprehensive program includes five components, customized to the operations and culture of the employer's workplace and workforce:

1. Written Policy and Procedures
2. Employee Education
3. Supervisor Training
4. Drug and Alcohol Testing
5. Plan for Employee Assistance

To understand the necessity of these components and what employers need to consider in developing each, review MODULE 2 of "THE RIGHT DOSE."

Employer Return on Investment (ROI)

Adopting a second-chance system can be a wise and financially sound business decision for an employer. Consider these facts:

- The cost of replacing an employee ranges from 25% to 200% of that employee's annual salary, not including losses in company knowledge, continuity and productivity.¹
- In terms of absenteeism, an employee in recovery from a substance use disorder misses less work than the general workforce, resulting in a cost savings of more than \$3,200 per year.²
- There are savings in terms of health care costs, including hospital and emergency room use, ambulatory care and primary medical care.³

In addition, the loyalty of an employee who has been supported by his or her employer to get healthy is immeasurable.

This ROI also has a built-in safeguard for the employer. If the employee does not comply with the steps in the process, he or she has self-elected to leave the company.

1 "A Substance Use Cost Calculator for Employers – Methodology." NORC at the University of Chicago for Shatterproof, and the National Safety Council. www.nsc.org/work-safety/safety-topics/drugs-at-work/methodology

2 NORC at the University of Chicago.

3 *Ibid.*

Part 2

The Role of Testing Within a Second-Chance System

The result of a workplace drug test can objectively screen for whether the employee or prospective employee has a drug in his or her system at a certain, scientifically provable level. The drug test does not denote whether the individual's drug use resulted from poor judgement (as in substance misuse) or whether behavioral health management is needed for SUD, a medical condition he or she may or may not know they have.

The employer who receives a positive test result for a candidate or employee is not equipped to make a judgment about what the test result truly means. However, by applying an objective second-chance system, the employer may have the opportunity to help the individual course-correct by retaining the employee who made an unhealthy choice or by helping to identify a serious medical problem for the employee who is subsequently diagnosed with SUD.

Without guidance and an objective system to identify and diagnose a problem and take the appropriate corrective action, such an individual has been generally deemed unemployable based upon the positive test result.

Drug testing – also known as systems presence testing – is the first step in this objective, second-chance system.

Testing the Employment Candidate

An employer should only apply pre-employment testing to an applicant who is otherwise qualified for the position and to whom a conditional offer of employment has been extended. Unless required by a higher authority than the employer (e.g., the U.S. Department of Transportation), a pre-employment test will be for drugs only.

Determining how many and which drugs are included in the test (i.e., a drug testing panel) should be established ahead of time through an agreement with a workplace drug testing system involving a federally certified laboratory and employing chain-of-custody collection of urine or another bodily specimen. This practice should be consistently followed.

Testing an Existing Employee

An existing employee may be tested under several testing applications to which they are subject under the employer's DFWP. Through the employer's DFWP operations, employees will have been informed and afforded the opportunity to get answers to their questions and understand their rights as it relates to drug and alcohol testing. Caution should be taken to assure that employees' rights are protected, especially in light of the fact that:

- under the Fourth Amendment, a drug test is "search and seizure"; and
- per the Americans with Disabilities Act (ADA), an alcohol test is considered a medical exam.

**For more information about alcohol and drug testing,
refer to MODULE 4 of "THE RIGHT DOSE."**

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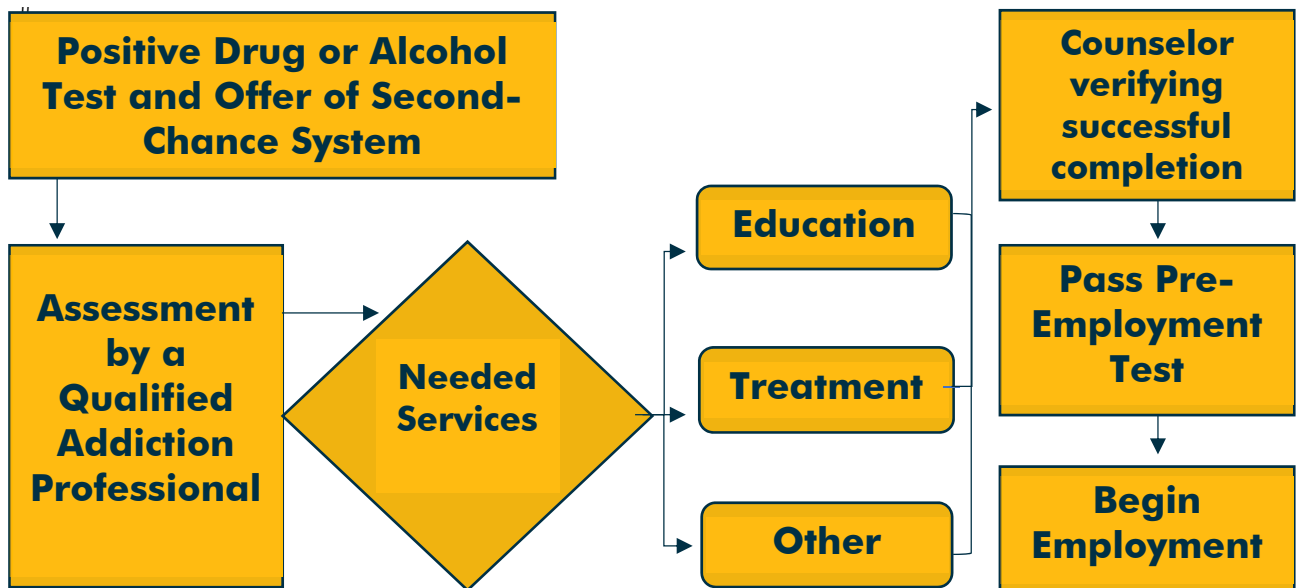
Protocols of a Second-Chance System

Although participation is voluntary, in order for an employer to enjoy the protections provided under HEA 1007 – including protection against liability in a civil action alleging negligent hiring due to the negligence of the employee – the employer must implement and consistently apply a standardized system that follows these best-practice guidelines for a second-chance system.

The Employment Candidate

If the candidate tests positive for illegal drug use or alcohol, the employer will explain that the employment process will be suspended until the candidate satisfactorily completes the required steps of the second-chance system. Once the candidate has completed the steps and is reported as being ready for work by the qualified counselor (licensed under IC 25-23.6), the candidate should undergo a new, pre-employment test and begin regular employment. Depending upon the recommendation by the counselor, the individual may be required to undergo periodic, unannounced drug testing for a specified period of time (“follow-up testing”) to support him or her during the process of remaining free of drug misuse.

Process Overview



An Existing Employee

For concerns of safety and liability, the employer will need to standardize when to keep an employee on duty if she or he tests positive on a drug and/or alcohol test. However, if the positive test is due to the employer having reasonable suspicion of the individual being under the influence of alcohol and/or another drug, the individual should be removed from duty immediately and not reinstated until a qualified counselor clears them following the second-chance steps. Under other applications of testing – such as post-accident or random tests – if the employee tests positive, removal is determined by the circumstances of the situation and as articulated in the written procedures of the employer’s DFWP policy.

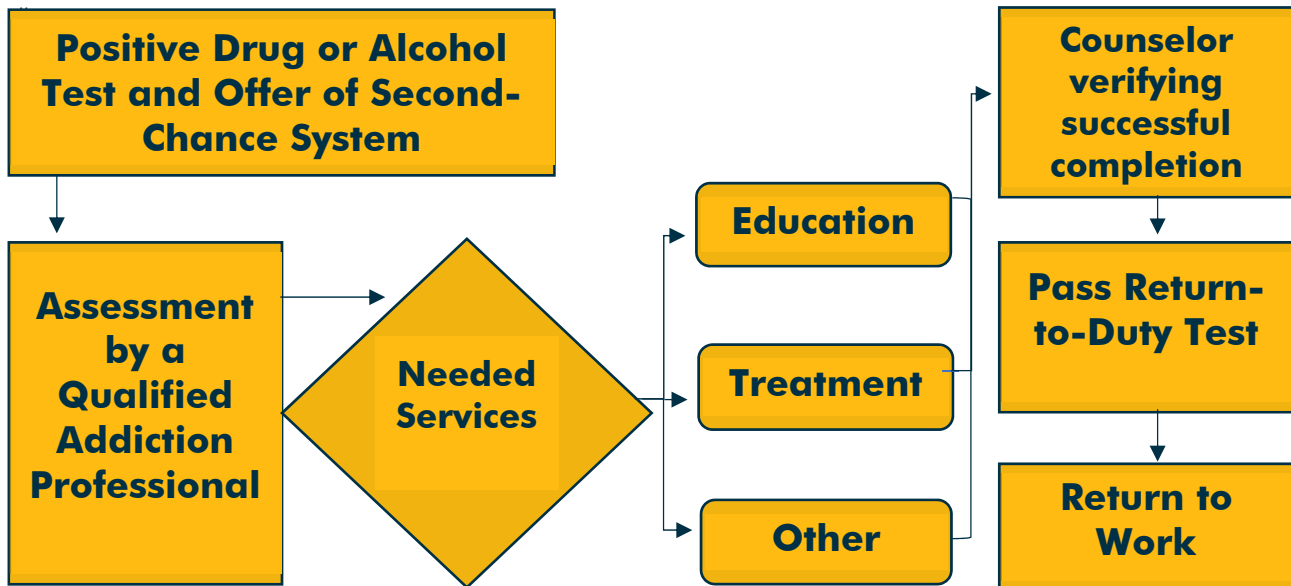
If it is the first time an employee has tested positive, the employee is offered a second chance and is informed that satisfactorily completing those steps are terms of employment. Once he or she has satisfactorily completed the required steps and is reported by the qualified counselor (licensed under IC 25-23.6) as authorized to return to work, the employee will take and pass a return-to-duty test and will resume work activities.

An existing employee who has completed or is in the process of completing the second-chance system may also face some disciplinary actions as determined by the circumstances of his or her situation at the time of the DFWP violations.

Example: If there was financial loss incurred by the employer at the hands of the employee who was under the influence, with pre-notice the employee may be put on a restitution payment system.

The returning employee may also be subject to follow-up testing, additional prevention/education services, and/or treatment as specified by the counselor.

Process Overview



Second-Chance Protocol

	CANDIDATE	EXISTING EMPLOYEE
Recommended for Employment or Reinstatement by Counselor	Once the candidate has satisfactorily completed the recommendations of his or her assessing professional of the second-chance system, the candidate will be recommended as ready for employment by the provider.	Once he or she has satisfactorily completed the required steps and is recommended for return to duty by the qualified counselor (licensed under IC 25-23.6), the employee will have a return-to-duty test and can resume work activities.
Pass Drug Test	Once the candidate has been reported as being ready for work by the qualified counselor (licensed under IC 25-23.6), the candidate must undergo and pass a new pre-employment test.	Once he or she has satisfactorily completed the required steps and is recommended for return to duty by the qualified counselor (licensed under IC 25-23.6), the employee must undergo and pass a return-to-duty test.
Begin Employment Return-to-Work	Once the candidate has been recommended for employment and passed a new pre-employment test, he or she should commence employment.	Once he or she has satisfactorily completed the required steps and is recommended for return to duty by the qualified counselor (licensed under IC 25-23.6), the employee will have a return-to-duty test and can resume work activities.
Follow-up Testing (When Applicable per Counselor)	Depending upon the recommendation of the counselor, the individual may be required to undergo periodic, unannounced drug testing for a specified period of time (“follow-up” testing) to support him or her in the process of remaining free of drug misuse.	An existing employee who has been through the second-chance system may also face some disciplinary actions as determined by the circumstances of his or her situation at the time of the drug-free workplace program violations. For example, if there was any financial loss incurred by the employer at the hands of the employee who was under the influence, with pre-notice, the employee may be put on a restitution payment system. Just as with the candidate, the returning employee may also be subject to follow-up testing as specified by the counselor.

A list of addiction treatment professionals licensed under IC-25-23.6 can be found at www.in.gov/fssa/addiction.

Part 4

Assessment and Referral Protocol

The Assessment

Clinical assessment is the diagnostic process to assess whether an individual who tests positive for alcohol or other drugs needs prevention/intervention services or treatment for a substance use disorder (SUD). It should be performed by a professional counselor with specialized training and experience diagnosing addiction (SUD). The assessment often involves more than a single counseling session and may also include the application of a written assessment tool. The professional counselor will determine the level of the individual's condition and what services are recommended.

For more information about the assessment process, visit MODULE 5 of "THE RIGHT DOSE."

A list of certified addiction treatment providers that an employer may use under these established guidelines can be found at www.in.gov/fssa/addiction.

Addiction Counselor Recommendations

Based on the clinical, diagnostic assessment, the counselor will determine the level of care the individual needs. The counselor will make either education and/or treatment recommendation for the employee. If the counselor determines that the employee does not have an SUD that requires treatment, education will be recommended, which often can be completed after the employee has been returned to work.

In other cases, a number of self-help meetings – such as Alcoholics Anonymous (AA), Narcotics Anonymous (NA), or SMART Recovery – may be recommended. Depending upon the individual's condition, he or she may even continue working while attending traditional outpatient treatment, which can include individual and/or group counseling, family therapy, educational groups and other therapies.

Employees who need a higher level of assistance may be referred to a higher level of care such as intensive outpatient treatment or partial hospitalization. In these situations, they can live at home (and possibly even keep working) while attending counseling sessions most days or evenings of the week.

Finally, an employee with a severe SUD may be referred to residential or inpatient treatment.

Getting Feedback from the Counselor

While the employee is receiving assistance services (and commonly is off duty), it is important for the employer to stay informed about the employee's compliance, progress, and timeline for returning to duty. This highlights the importance of aligning with a provider for these services who understands this employer need. Ideally, the provider is proactive in sending reports and return-to-duty paperwork to prevent the employer from having to "chase" such information.

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The employer should only ask for and receive information from the counselor that is of business importance and relevance, such as the following:

- Whether the employee is in compliance with the counselor's recommendations
- Whether the employee needs to be off work while he or she completes the recommendations
- A timeline of when the counselor projects the employee will be ready to resume duty
- Announcement that the employee is authorized by the counselor to resume duty
- Any limitations, accommodations or additional actions (e.g., follow-up testing frequency and duration) that may be needed by the employee

Although there is no obligation, unless the employee agrees in writing, the employer will not receive any personal information that has been shared between the employee and the counselor.

Return-to-Duty Recommendations in Writing from the Counselor

Typically, the return-to-duty recommendations and stipulations are memorialized in a letter or a standardized form provided by the treatment provider (i.e., the addiction counselor). When the employer selects or works with a provider, the employer should ask about how the provider handles this aspect. Best practice includes:

- a written return-to-duty clearance;
- recommendations for the employee; and
- documentation of workplace readiness for the applicant or employee.

If ongoing follow-up drug and/or alcohol testing is recommended, the counselor may indicate the drugs to be tested, and how often and how long this testing should continue. The recommendations may also reference additional terms (if applicable) mentioned in the agreement between the employer and the candidate or employee. (See Part Five of these guidelines, "Administrative Guidance," beginning on the following page.)

Additional Violations

If an employee refuses to complete an assessment or does not satisfactorily complete the counselor's recommendations, best practice indicates termination.

Under HB 1007, an employer may terminate or offer the second-chance system again to an existing employee for a positive test or other DFWP violation, even if it was not the employee's first violation. However, in this case, the employer should be sure to share information with the counselor about the previous violation and outcomes from the earlier assessment.

In either of these cases, the employer should determine this stance before a situation presents itself and should include those preferences in their written DFWP policy. Of course, all consequences should be standardized and consistently applied – especially within the same workforce classification.

Part 5

Administrative Guidance

The employer should operationally structure the administrative steps and protocols of the company's second-chance system and memorialize them in writing for management to follow consistently.

For more information about these administrative issues, review MODULE 5 of "THE RIGHT DOSE."

Written Agreement

As the individual is going through the second-chance system and the employer is holding a position open for the employee, there should be a written agreement between the employer and the candidate or the existing employee to communicate expectations and support the interests of all parties. The terms of the arrangement should be outlined in this participation agreement (sometimes called a "last-chance agreement") and signed by the candidate or existing employee as well as the employer. This agreement should be a standard form created by the employer. Because it is a legal agreement that will intersect with all kinds of other authorities to which the employer is subject (e.g., other human resources policies, other state and federal laws, etc.), the agreement should be fully reviewed and supported by the employer's corporate legal counsel before implementation.

This agreement should address and include all of the following:

- A statement of understanding that: 1) this is a second-chance opportunity being granted to the employee following a workplace violation; and 2) satisfactorily completing the process is terms for employment
- Permission for an exchange of information between the employer and the counselor pertaining to the assessment and referral
- Permission for the employer to receive work-related reports about the employee that are irrelevant to business interests (not including personal information)
- Specifics about who is to pay for services, and any specific terms for any payment required from the employee
- Acknowledgement that returning to work is contingent upon a written clearance from a qualified counselor
- What alcohol or other drug testing will be required during and after the assessment
- Acknowledgement that the employee is subject to meet the company's standards of conduct applicable to all other employees
- Consequences of another violation following the one for which this agreement is being signed
- Circumstances under which the employee could be terminated or not returned to work
- Identification and permission for certain protected health care information to be disclosed to the employer and/or other specified parties (if applicable)
- Time off entitlements (if applicable)

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- Any other terms specific to this situation with this employee

In drafting this agreement, employers should consider and, where relevant, refer to any other authorities that could impact this agreement. For example, employers with 50 or more employees may be subject to the Family Medical Leave Act (FMLA). Of course, offering a second chance will intersect with other corporate human resources policies and practices, such as time off, leave-of-absence specifics, and corporate entitlements (i.e., short-term disability benefits). Also, the candidate or existing employee may have other authorities relevant to the specific situation (e.g., credentialing boards for medical professionals or peace officers, or state laws for specific industries such as Indiana’s drug testing requirements for child care workers).

To access helpful templates, visit the Legal Action Center at www.LAC.org.

Confidentiality: Protecting the Employee

Working behind the scenes of a second-chance system are regulations such as the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and 42 CFR Part 2 to help protect the privacy of the employee. The operational responsibilities of these regulations fall principally on those directly involved with providing, billing or paying for the health care services in the normal course of business (e.g., health insurance, addiction treatment service providers). These entities must obtain written authorization from the employee to share certain confidential information with another party, including an employer.

However, employers are subject to the Americans with Disabilities Act (ADA) and are responsible to maintain the confidentiality of any disability-related information collected, and may only disclose it under very limited circumstances. Therefore, as best practice and modeling HIPAA and Part 2 regulations, employers need to have strict procedures in place to protect the privacy and confidentiality rights of the employee. Employers must be sure to:

- secure in a confidential manner – and separately from personnel files – any information including an employee’s records involving drug test results, as well as assessment and treatment reports;
- share this information internally only with those who have a “need to know”; that is, someone who is within the applicable chain-of-authority or chain-of-communication and needs the information to perform his or her responsibilities in support of the employee (note that this may or may not include the employee’s direct supervisor); and
- share externally, taking care to adhere to the specifics and when the employee has provided written authorization to disclose specific information to specific entities for specific purposes.

Compensation and Time Off for the Employee

Typically, the employee is on disciplinary or administrative time off from the time they are removed from duty and have giving their specimen sample in a drug test until they’re recommended to return to work by the counselor and have passed a return-to-duty test.

If it is determined that the employee needs treatment for a substance use disorder that would keep him or her off the job, the employer’s drug-free workplace program should outline what time off the employee is entitled to under applicable policies such as vacation, sick or personal time, short-term disability and/or leave of absence policies or the FMLA.

Part 6

Paying for Services

Per HEA 1007, it is the employer's choice whether to pay none, a portion, or all of the costs for any of the services necessary for the employee following the clinical, diagnostic assessment.

If the employer and employee choose to assign the employee's wages under IC 22-2-6-2(a), amounts may be deducted from the employee's wages to pay for a part of the employee's drug education and addiction services. The part of the Indiana Code that focuses on assignment of wages and requisites can be viewed online at <http://iga.in.gov/legislative/laws/2017/ic/titles/022#22-2-6-2>.

Insurance

According to the Substance Abuse and Mental Health Services Administration (SAMSHA), lack of insurance is cited as one reason there is a gap between the number of people who need treatment and the number who actually get it.¹ By law, the Mental Health Parity and Addiction Equity Act (Parity Act) requires a health plan to apply equal coverage to mental health and substance use as they do for other medical and surgical benefits. However, the Parity Act is often not actively enforced.

Covered employees who are seeking treatment for themselves or a family member should be encouraged to contact the insurance carrier to ask questions about their specific needs and circumstances. In shopping for or investigating insurance, individuals and employers committed to providing adequate coverage for addiction treatment need to ask about such things as the following:

- What services and stages of treatment and recovery are covered (e.g., detox, inpatient, outpatient, residential treatment, aftercare counseling)
- Whether pre-authorization is required and who needs to issue that authorization
- Recommended duration of treatment options, pending addiction counselor recommendation
- How payment is structured, including deductibles, copayments, coinsurance and maximum out-of-pocket considerations
- In-network provider options as well as coverage and costs for out-of-network providers

Medicaid or the Healthy Indiana Plan (HIP)

Some employees and employment candidates who are not covered under private insurance may qualify for free or low-cost health insurance through Medicaid or the Healthy Indiana Plan (HIP), Indiana's expanded Medicaid program.

While both options include coverage for those needing help with a substance use disorder, individuals still

¹ "Facing Addiction in America: The Surgeon General's Report on Alcohol, Drugs, and Health." Substance Abuse and Mental Health Services Administration (US). Office of the Surgeon General (US). Washington (DC): US Department of Health and Human Services; 2016 Nov. www.ncbi.nlm.nih.gov/books/NBK424859

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may have to pay some out-of-pocket expenses.

Employers can pay for some or all of an employee's monthly contribution to HIP, and employees may receive extra financial incentives from HIP to encourage their involvement in substance use disorder treatment. If you have questions, or to find out if you or an employee may be eligible to participate in HIP, visit www.in.gov/fssa/hip or call 1-877-GET-HIP9 (1-877-438-4479).

For more information about navigating insurance and the Healthy Indiana Plan (HIP), refer to MODULE 5 of "THE RIGHT DOSE."

Part 7

Identifying an Assistance Provider and Plan

A major element of a drug-free workplace is to have a plan for assistance – put in place before it is needed – that outlines where employees will be sent for an assessment following a positive test or other program violations. This plan should also be applicable for the employee who voluntarily asks for help for themselves or a family member. Ideally, this information will be published or posted in conspicuous locations throughout the employer’s work environment.

Keys to Success

There are a variety of provider options for assessment and further assistance. In selecting a provider, employers need to understand their benefits and what is available to their employees. Employers should also be mindful of these keys to success:

- The services must be high quality. Seek out a credentialed addiction treatment service provider. The more knowledgeable and experienced the counselor, the more accurate the assessment and successful the treatment.
- Services need to be affordable and accessible to the employee.
- The provider should be willing to proactively provide regular progress reports to the employer.
- The services must be timely to assure the employee is cleared to return to work – healthy, safe and ready to be productive – as soon as possible.
- The admission process should be transparent and should include what steps to take in the event intake is not possible due to capacity.
- The provider should be willing to provide follow-up recommendations to the employer, including when and how often to administer follow-up testing. This will both incentivize the employee to stay drug-free and will alert the employer to future concerns.

Provider Options

The array of provider options each has strengths and challenges for the employer. In selecting an assistance provider, employers need to be critical shoppers to assure that their needs and the needs of their employees are met efficiently and effectively.

The following is an overview of the options available to employers and their employees.

- **Community mental health centers:** Because they are state-funded, they may be more affordable to the employee. This option typically requires no out-of-pocket investment from the employer, but there may be indirect costs associated with extended time off the job if the employee encounters a waiting list. Because these services are typically there for the employee (rather than

Part 7

the employer), it may be challenging to proactively get regular compliance/progress reports since the employer is not paying for that service.

- **Faith-based organizations:** These can be helpful for an individual who would benefit by applying their chosen faith to the recovery process. Faith-based drug recovery centers and programs often make the spiritual element a large focus of treatment, along with the recovering person's medical needs. Again, these services are principally for the employee and can present challenges for the employer, similar to those referenced with community mental health centers.
- **Counselor who accepts the employer's insurance or union benefits:** While there is no additional out-of-pocket expense for the employer, waiting time could still be an issue and there may be challenges (at least initially) connecting with the counselor to obtain needed information.
- **Formal referral relationship with a private practitioner:** This option should increase the likelihood that the employer will receive timely services and necessary reporting. Payment will be contingent on employee benefits or require payment out of pocket.
- **Employee Assistance Program (EAP):** This is an employer-sponsored program designed to help employees access resources for workplace issues due to mental health, substance use disorders, personal problems, and other issues that impact an employee's job performance.

More About Employee Assistance Programs

An Employee Assistance Program (EAP) serves two clients: the employee and the employer. The employee and family members have access to a contracted number of sessions with a counselor per problem, per year. During these sessions, the EAP will conduct an assessment, provide brief counseling, or refer the employee if there is a problem that requires more in-depth treatment (e.g., clinical depression, SUD).

In making the referral, the EAP will research the employee's insurance and other benefits to find a treatment provider that is appropriate, affordable and accessible to the employee.

If an employer has mandated this assessment, the EAP will provide a report about the assessment and subsequent recommendations and will continue monitoring the employee's progress until they can be returned to work.

The cost of EAP varies, depending on employee count and other services included in the contract (e.g., on-site education, newsletters, web sites, other support services for employees and management).

A real benefit of EAP, since it's generally a pre-paid service, is that employees can reach out for services – confidentially and voluntarily – before there is a triggering critical incident.

Because the focus of EAP programs is work performance, EAP contracts can produce positive returns in direct cost savings (e.g., reduced medical, disability, or worker's compensation claims) and even more savings in the indirect costs associated with poor work performance.

Identifying an Assistance Provider and Plan

Research indicates the typical return on investment for an EAP is three dollars or more for every one dollar invested.¹ However, when selecting and contracting with an EAP, it is important for the employer to understand exactly what they can expect from the provider. For example, the contract should include:

- specifics about what services are provided to employees and management (e.g., assessment, referrals, educational resources, case management);
- how often the EAP will provide a utilization report;
- how and how often the EAP will market their services to employees and their families; and
- what the employer can expect when making a mandatory referral (e.g., average wait times, frequency of follow-up reports).

For more information about selecting and EAP, download the resource entitled “Planning and Negotiating EAP Services” in “THE RIGHT DOSE.”

¹ The Employee Assistance Trade Association (EASNA). “The Value of Employee Assistance Programs.” EAP Best Practices. 2015.

Part 8

Accountability: Collecting Data

In order to measure the success and viability of HEA 1007, the state will collect data annually from employers benefiting from these guidelines. It is up to each participating employer to track and collect information and submit it to the division by March 1 for the preceding year.

The following data should be collected and provided to the division:

1. The number of individuals who applied for employment and failed a drug screening
2. The number of existing employees who failed a drug test
3. The number of individuals in items (1) and (2) who were offered employment or continued employment under the second-chance system guidelines
4. The number of individuals in item (3) who accepted the offer of employment or continued employment under the second-chance system guidelines
5. The number of individuals in items (1) and (2) who declined the offer of employment or continued employment under the second-chance system guidelines
6. The number of individuals in item (4) who completed a recommended drug education and addiction treatment program

There may be additional information required by the division to be gathered. For further information or to request updates, please email info@wellnessindiana.org.

Conclusion

Armed with the science-based understanding of substance misuse and SUD, the state of Indiana is enacting these guidelines for House Enrolled Act 1007 of 2018 (HB 1007) to assist employers with the tools and incentives to adopt and implement a best-practice, second-chance system. The goal is to expand Indiana's healthy, employable workforce for growth and economic stability.

Resources

THE RIGHT DOSE: Supporting Your Workforce, Managing Your Risk Against Opioids:

We encourage you to also review "THE RIGHT DOSE," our video toolkit meant to complement these guidelines and provide further education. The toolkit can be accessed online at www.wellnessindiana.org/the-right-dose.

Topics include the following:

1. The impact of opioids in the workplace
2. Legally sound drug-free workplace program: What am I allowed (or not allowed) to do?
3. Crafting a policy that's right for YOUR business operation and culture
4. The why, when and how of workplace drug testing
5. Responding to an employee's harmful use of drugs

Wellness Council of Indiana: www.wellnessindiana.org; info@wellnessindiana.org; 317-264-2168

Indiana Chamber: www.indianachamber.com; membership@indianachamber.com; 317-264-3110

Working Partners: www.workingpartners.com; mail@workingpartners.com; 866-354-3397

Other resources:

- Indiana Division of Mental Health and Addiction: www.in.gov/fssa/dmha/index.htm
- Substance Abuse and Mental Health Services Administration (SAMHSA) Drug-Free Workplace Toolkit: www.samhsa.gov/workplace/toolkit
- National Safety Council – Prescription Drug Employer Kit: <http://safety.nsc.org/rxemployerkit>
- Richard M. Fairbanks Foundation – Indiana's Opioid and Tobacco Crisis: What Employers Can Do to Help: www.rmff.org/wp-content/uploads/2018/10/Tobacco-Opioid_OnePager_Employers_FINAL_web.pdf
- Society for Human Resource Management: www.shrm.org/pages/default.aspx
- Next Level Recovery: <https://www.in.gov/recovery/>

