



CHIEF OF THE NATIONAL GUARD BUREAU INSTRUCTION

NGB-J1
DISTRIBUTION: A

CNGBI 1400.25, Vol. 792
05 November 2019

NATIONAL GUARD TECHNICIAN SUBSTANCE ABUSE PROGRAM

References: See Enclosure B.

1. Purpose.

a. Instruction. This instruction is composed of several volumes, each containing its own purpose. The purpose of the overall instruction is to establish policy and assign responsibilities regarding the National Guard (NG) Technician Personnel Program in accordance with (IAW) reference a.

b. Volume. This volume provides policy and procedures for the NG Technician Substance Abuse Program IAW references a through i.

2. Cancellation. This instruction rescinds and replaces Technician Personnel Regulation 792, 08 February 2011, "Alcoholism and Drug Abuse Program."

3. Applicability. This instruction applies to all NG employees in the States, Territories, and District of Columbia.

4. Policy. It is NG policy to provide counseling, referral services, and other assistance (including necessary rehabilitative services) to all NG employees to aid them in solving personal problems impacting job performance. The National Guard Bureau (NGB) prohibits illegal drug activity and seeks to prevent and eliminate problematic substance use in the NG. When there is good reason to believe criminal conduct is directed towards, or potentially harmful to, the person or property of others, management's first obligation is to those persons or properties, and then to the employee(s) involved.

a. State Substance Abuse Policy Statements. Each State must establish policy on substance abuse. Policy statements must include the following:

(1) The NG recognizes substance abuse as a treatable health problem.

(2) Employees with substance abuse health problems or illnesses will receive the same careful consideration and assistance presently extended to employees having any other illness or health problems.

UNCLASSIFIED

(3) No employee's job security or promotional opportunities may be jeopardized by their request for counseling or referral assistance, except as limited by references b and c, relating to military technician and sensitive positions, and applicable Service-specific military policy.

(4) Conduct or performance issues that arise or occur as a result of substance abuse will be dealt with as the conduct or performance requires.

(5) The confidential nature of medical records of employees with substance abuse problems will be preserved IAW references j and k to the extent practical. However, this does not negate nor override military Service-specific reporting requirements.

(6) Sick leave may be granted IAW reference l for the purpose of treatment or rehabilitation, as with any other illness or health problem.

(7) Employees who suspect they may have a substance abuse problem, even in the early stages, are encouraged to voluntarily seek counseling, on an entirely confidential basis, by contacting the persons designated to provide such services. Military technicians are strongly encouraged to simultaneously alert the proper person within their military chain of command to avail themselves of Service-specific military protections available for those who voluntarily self-identify.

b. Use of alcohol or illegal drugs during hours of duty is a disciplinary offense. Use of illegal drugs or criminal misconduct associated with substance abuse during off-duty hours for military technicians is also a disciplinary offense. For Title 5 NG employees, the nexus for off-duty misconduct must be established IAW applicable law and regulations.

c. Privacy and Confidentiality. Employees in the NG Technician Substance Abuse Program are protected by the restrictions contained in references n, o, and p. However, physical and mental fitness determines whether military technicians are deployable and whether they are allowed to remain in the military. In order for a commander to know which subordinates are mentally and physically able to serve and deploy to fight, the commander is permitted access to the information in the subordinates' medical and mental health records (see reference m, paragraphs C1.2.5 and C7.1.1). At some point in the technician chain of command, both the technician and military supervisory chain combine. However, even on the military side there are limited protections available for those who voluntarily self-identify a substance abuse problem (for example, reference n, paragraph 3.7.1, or reference o, Chapter 7-3.). Information maintained in a military technician's military medical records may be accessed by "Military Command Authorities" to "assure the proper execution of the military mission" (see reference m, paragraph C7.1.1). The military medical staff may disclose medical information on a

need-to-know basis to a commander to determine the member's "fitness for duty" and "fitness to perform any particular mission, assignment, order, or duty." Different rules apply to Title 5 NG employees, so the technician and military supervisory chain should coordinate any request with the servicing State NG judge advocate. Finally, we note that the vast majority of NG medical facilities are not Military Treatment Facilities for the purposes of the Health Insurance Portability and Accountability Act.

(1) Confidentiality Requirement. There are two types of disclosures: with and without consent. This applies to disclosing information and records (oral or written) on clients who are or were receiving treatment under the NG Technician Substance Abuse Program. The confidentiality requirement applies to information on a person's past or present involvement, or lack of involvement, in an NG Technician Substance Abuse Program.

(2) Disclosure Without Consent. No one may intentionally or inadvertently disclose an employee's participation in a substance abuse prevention program. Persons making an unauthorized disclosure of records may be subject to criminal penalties. Medical emergency is a valid reason for disclosure of personally identifiable information (PII) to medical personnel when consent cannot be obtained, and PII can be disclosed for the purpose of conducting a Medicare and Medicaid audit or evaluation IAW reference k.

(3) Disclosing Information. When disclosing information in response to a valid disclosure request, limit the disclosure to the minimum. Provide only information necessary for a response.

(4) Disclosure with Consent. Disclosure with consent can be accomplished in the following situations:

(a) Diagnosis, Treatment, and Rehabilitation. The Human Resources Officer (HRO) must determine if the request is valid and if such disclosure will harm the client.

(b) Employers and Employment Agencies. The HRO may allow disclosure that is reasonably necessary and appropriate to facilitate the employment of patients and former patients, while protecting employees against unnecessary or excessively broad disclosure.

(c) Release from Criminal Justice System. Where participation by an individual in a treatment program is a condition of release from confinement.

(d) Legal Counsel. The employee's legal counsel may, on behalf of the employee, disclose information relating to the employee's participation or use of illegal controlled substances.

d. Discussing Illegal Activities. Counseling persons who have substance problems may involve discussion of their illegal activities. Personnel performing an alcohol or drug abuse prevention function may disclose a patient's communication relating to crimes which have been committed by patients, as long as the disclosure does not include any PII IAW reference k. A disclosure of PII for the purpose of investigating or prosecuting a patient in connection with disclosures of a patient's communications relating to crimes may be made only if an authorizing court order is obtained IAW reference k. A court order authorizing the disclosure of PII for the purpose of investigating or prosecuting a patient may be obtained only if:

(1) The crime, or threatened crime, causes (or would cause) or directly threatens loss of life or serious bodily injury (for example kidnapping, homicide, assault with a deadly weapon, armed robbery, and rape).

(2) It is believed the crime or threatened crime has been or will be committed on the premises of the program or against personnel involved with the program.

e. Court Orders. When personnel performing substance abuse functions determine that a court order authorizing the disclosure of PII will be sought, they should request their agency initiate appropriate action toward obtaining such an order IAW reference k. Personnel performing substance abuse functions will not disclose PII without employee consent. Without consent, the application will be instituted in the name of a fictitious person (such as John Doe). Any authorizing court order must identify the patient by reference to the fictitious name appearing on the application.

f. Records and Reports. Supervisory documentation of employee job performance and actions taken to motivate correction of deficiencies will be filed in the supervisor's work folder IAW reference q. Supervisors will document only the conduct or performance and not speculate as to the cause of such conduct or performance. Supervisors' notes are not subject to the requirement of confidentiality regulations since supervisors are not performing an alcohol or drug abuse prevention function. If a supervisor refers an employee to the Employee Assistance Program Coordinator (EAPC) for counseling or referral, the supervisor is not entitled to feedback on the employee's performance or progress unless the EAPC obtains written consent from the employee.

(1) Documentation of Referrals. Documentation of referrals for counseling will not be made in the supervisor's work folder or maintained in the official personnel folders. When not in use, records on employees referred for counseling will be maintained by the EAPC in a secure room, locked file cabinet, safe, or other similar container.

(2) Fitness-for-Duty and Pre-Employment Examinations. Dual-status NG employees must meet the military medical qualifications for membership in the Army National Guard or the Air National Guard, as appropriate.

(3) Use of Sick Leave. Employees who decide to undergo a prescribed program of treatment requiring absence from work should be granted sick leave.

(4) Expenses of Rehabilitation. There is no provision in reference c for payment of Federal employee rehabilitation costs. An employee is responsible for the costs of treating his or her alcohol or drug problem as with any other health condition. The employee may receive some financial assistance, as with other illnesses, from his or her Federal Employees Health Benefits plan.

(5) Employment Considerations. When applicants who have a history of alcoholism or drug abuse are being considered for an employee position, The Adjutants General (TAGs) or their designee will make a determination on the basis of whether or not the applicant is an acceptable risk based on the applicant's voluntary participation in rehabilitative treatment.

g. Disciplinary Actions. Employees found using illegal drugs will be subject to disciplinary action as provided for in this instruction, reference q, and applicable Department of Defense (DoD) and Service policies. IAW references q through t, such action is not mandatory for an employee who voluntarily admits to illegal drug use, obtains counseling or rehabilitation through an Employee Assistance Program (EAP), and thereafter refrains from using illegal drugs.

(1) Disciplinary action will be consistent with the requirements of any governing collectively bargained agreement, DoD and NGB policy, and tables of penalties. Available disciplinary measures include reprimand, suspension, and removal.

(2) The NG Technician Substance Abuse Program supplements, but does not replace, existing procedures for dealing with problem employees. It is NG policy to assist an NG employee in recovery from drug abuse, but this does not negate the obligation for military leadership to process illegal drug abuse in accordance with applicable military Service policy and maintain military good order and discipline where appropriate.

5. Definitions. See Glossary.

6. Responsibilities. See Enclosure A.

7. Summary of Changes. This is the initial publication of CNGBI 1400.25, Vol. 792.

8. Releasability. This instruction is approved for public release; distribution is unlimited. It is available at <<https://www.ngbpdc.army.mil/>>.

9. Effective Date. This instruction is effective upon publication and must be reissued, cancelled, or certified as current within five years of its publication.

A handwritten signature in black ink, appearing to read "Dawne L. Deskins", enclosed within a hand-drawn oval border.

DAWNE L. DESKINS
Major General, USAF
Director, Manpower and Personnel
National Guard Bureau

Enclosures:

- A -- Responsibilities
- B -- References
- GL -- Glossary

ENCLOSURE A

RESPONSIBILITIES

1. Manpower and Personnel Directorate (NGB-J1). NGB-J1 will:
 - a. Serve as the primary advisor to the Chief of the National Guard Bureau (CNGB) on all personnel and manpower issues in the NG.
 - b. Provide the CNGB with oversight on human resources employee program development, staffing, and execution of policy, plans, and programs.
2. TAG. TAGs will:
 - a. Establish a substance abuse program for their State or Territory.
 - b. Ensure State policies and standards are clearly understood and adhered to by all employees.
3. HRO. The HRO will:
 - a. Develop and implement local plans and procedures, and issue administrative guidance as required.
 - b. Manage the State's EAP services. This may include acting as the contracting officer's technical representative.
 - c. Ensure training and support to supervisors and managers on substance abuse requirements and appoint an EAPC.
4. EAPC. The EAPC will:
 - a. Provide advice, assistance, and training to commanders, managers, and supervisors on the effective use of and participation in the EAP.
 - b. Provide educational materials to prevent or discourage alcohol or drug abuse and provide EAP information during orientation of newly employee orientation to ensure awareness of available services.

ENCLOSURE B

REFERENCES

- a. CNGB Instruction 1400.25A, 10 October 2017, “National Guard Technician Personnel Program”
- b. Title 32 United States Code (U.S.C.), Section 709, “Technicians: Employment, Use, Status”
- c. 5 U.S.C., Part III, Subpart F, Chapter 73, Subchapter VI, “Drug Abuse, Alcohol Abuse, and Alcoholism”
- d. DoD Instruction 1010.09, 22 June 2012, “DoD Civilian Employee Drug-Free Workplace Program,” Incorporating Change 1, Effective 28 June 2018
- e. DoD Instruction 1010.04, 20 February 2014, “Problematic Substance Use by DoD Personnel”
- f. 10 U.S.C., § 10508, “National Guard Bureau: General Provisions”
- g. CNGB Memorandum, 16 February 2017, “Designation of the Adjutants General to Appoint, Employ, and Administer National Guard Employees”
- h. Public Law 114-328, “National Defense Authorization Act for Fiscal Year 2017”
- i. Public Law 114-92, § 1053, “The National Defense Authorization Act for Fiscal Year 2016”
- j. 5 U.S.C., § 552a, “Records Maintained on Individuals”
- k. 42 Code of Federal Regulations (CFR), Part 2, “Confidentiality of Substance Use Disorder Patient Records”
- l. 5 CFR 630, “Absence and Leave”
- m. DoD 6025.18-R, 24 January 2003, “DoD Health Information Privacy Regulation”
- n. Air Force Instruction 44-121, 18 July 2018, “Alcohol and Drug Abuse Prevention and Treatment (ADAPT) Program”
- o. Army Regulation 600-85, 28 November 2016, “The Army Substance Abuse Program”
- p. 5 U.S.C., § 2302, “Prohibited Personnel Practices”

- q. 28 U.S.C., § 535, “Investigation of Crimes Involving Government Officers and Employees; Limitations,” paragraph (b)
- r. 5 CFR 432, “Performance Based Reduction in Grade and Removal Actions”
- s. 5 CFR 752, “Adverse Actions”
- t. Technician Personnel Regulation 752, 27 August 2010, “Discipline and Adverse Action”

GLOSSARY

PART I. ACRONYMS

CNGB	Chief of the National Guard Bureau
DoD	Department of Defense
EAP	Employee Assistance Program
EAPC	Employee Assistance Program Coordinator
HRO	Human Resources Officer
IAW	In accordance with
NG	National Guard
NGB	National Guard Bureau
NGB-J1	Manpower and Personnel Directorate
PII	Personally identifiable information
TAG	The Adjutant General

PART II. DEFINITIONS

Alcoholism -- A treatable condition or illness characterized by excessive consumption of alcohol to the extent that the individual's physical and mental health, personal relationships, social conduct, or job performance is impaired.

Drug Abuse -- The improper or illegal use of a controlled substance or the improper use of prescribed or over-the-counter drugs that are packaged with a recommended safe dosage. Also includes the use of a substance for other than its intended use such as sniffing glue, or gasoline fumes, or steroid use without medical approval.

Employee -- Title 32 dual-status excepted service employees and Title 5 National Guard excepted or competitive service employees defined in references g, h, and i.

Military Command Authority -- The commanding officer over the patient or member.

Problematic Substance Use -- The use of any substance in a manner that puts the user at risk of failing in responsibilities to mission or family, or that is considered unlawful by regulation, policy, or law. This includes substance use that results in negative consequences to the health or well-being of the user or others or meets the criteria for a substance use disorder.

States -- The 50 States, Commonwealth of Puerto Rico, Territories of Guam and the Virgin Islands, and District of Columbia, which are authorized a National Guard.

Substance abuse -- Overindulgence in or dependence on an addictive substance, especially alcohol or drugs.