



**Department of Transportation
Office of Drug and Alcohol Policy and Compliance
49 CFR Part 40 Interpretation Notice**

Question: Does anyone (i.e., employer, managed-care “gatekeeper”, consortia, third-party administrator, or service provider network) have the authority to change a SAP’s initial assessment for assistance?

Response: No. The Department has long held that employees and employers cannot “shop around” for the SAP evaluation they want in terms of assistance needed by the employee to address the employee’s alcohol or drug problems. In keeping with this position, the Department believes that no one has the authority to change, append, or modify the SAP’s initial evaluation recommendation for assistance.

This means one SAP, one initial SAP evaluation, and one SAP recommendation is the requirement in determining what assistance, if any, is needed. The rule text does not provide for multiple SAPs, for multiple SAP initial evaluations, or for multiple SAP recommendations for assistance. Nor do the rules provide for SAP recommendations to be changed.

The Department believes this is most important in cases where a third-party wishes to lessen or downgrade a SAP’s recommendation by changing the SAP’s evaluation or seeking another SAP’s evaluation. We think that in situations converse to this -- where the third-party wishes a more stringent recommendation -- that the same basic principle applies.

An employer must ensure that the selected SAP is qualified to do the job, is knowledgeable of DOT SAP procedures (for initial evaluation, referral, follow-up evaluation, and follow-up testing), and is cognizant of the SAP role and function as it relates to the employer’s interests in safety sensitive duties. Employers must also ensure that they receive SAP recommendations directly from SAPs performing the evaluation and that no third-party person or entity changed those recommendations.

