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**DECISION**

*Johnnie R. ...*  
**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D. C. 20548

**FILE:** B-187074

**DATE:** November 7, 1977

**MATTER OF:** Environmental Protection Agency - Procurement  
of Psychological Counseling Services for Govern-  
ment Employees

**DIGEST:** Under 5 U. S. C. § 7901, Pub. L. 91-616  
and Pub. L. 92-255, and implementing  
regulations, Environmental Protection  
Agency may expend appropriated funds  
for procurement of diagnostic and pre-  
ventive psychological counseling services  
for employees at its Research Triangle  
Park, North Carolina, installation.

This responds to a request from Mr. Alvin L. Alm, Assistant Administrator for Planning and Management (PM-208), United States Environmental Protection Agency (EPA), for an advance decision as to the legality of expending appropriated funds for "Agency and Regional Management" for psychological counseling services. The Personnel Management Division, Office of Administration, of the EPA's field activity at Research Triangle Park, North Carolina, has proposed the procurement of professional psychological counseling services which would establish an adjunct service for EPA employees on an as needed basis. Referrals to the proposed service would be based upon counseling needs which are beyond the scope, expertise, or ability of the Personnel Management Division in seeking a resolution of the difficulties of the agency employee(s) and which have a definite impact on maintaining an effective and productive work environment. Further, EPA indicates that the existing health unit at its installation at Research Triangle Park, does not have the desired counseling capability to seek resolution of employee-emotional difficulties and hence there is a need to procure such services by contract.

This EPA request for proposal (RFP) describes the counseling services to be offered as follows:

"Counseling services for each referral shall have three (3) separate phases:

"Phase I: Introductory evaluation and analysis (one (1) session). Within five (5) working days after completion of this phase, the contractor shall deliver

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an Initial Evaluation Report to the EPA Project Officer covering this phase.

"Phase II: Follow-up counseling based upon evaluation needs (1-5 sessions). The contractor shall deliver an Interim Status Report to the EPA Project Officer within five (5) working days after every second follow-up session except when a Final Report is due under Phase III instead. The report shall cover progress in this phase.

"Phase III: Final resolution of problem. Within ten (10) working days after conclusion of the counseling, the contractor shall deliver a Final Report to the EPA Project Officer."

In addition, the proposal includes an optional item for the preparation and conduct of a "Human Relations Training Course" for EPA supervisory personnel.

The EPA asks whether the language contained in our decision 53 Comp. Gen. 230 (1973) would prohibit the expenditure of appropriated funds for such services. In that decision, the Internal Revenue Services (IRS) desired to utilize Department of State medical services, authorized under the Foreign Service Act of 1946, 22 U.S.C. §§ 911, 912, 1156-58, on a reimbursable basis for IRS employees stationed overseas. Our decision 53 Comp. Gen. 230 held as follows:

"Numerous decisions of our Office concerning the furnishing of medical treatment to civilian employees of the Government--except for illness directly resulting from the nature of their employment--have expressed the general rule that medical care and treatment are personal to the employee, and that payment therefor may not be made from appropriated funds unless provided for in a contract of employment or by statute or valid regulation. See, e.g., 47 Comp. Gen. 54, 55 (1967); 41 id. 531, 532-33 (1962); id. 387, 388 (1961), and decisions cited therein. We must conclude that this general rule precludes the use of IRS appropriations to make reimbursement for the services contemplated."

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The above-quoted general rule prohibiting expenditures of appropriated funds for employee health care recognized an exception where statutory authority exists for such expenditures. See 47 Comp. Gen. 54 (1967). In light of this exception, EPA questions whether such services may be provided under the authority contained in 5 U.S.C. § 7801 (1970) governing occupational health service programs for Federal employees. This statute provides in part as follows:

"§ 7801. Health service programs

"(a) The head of each agency of the Government of the United States may establish, within the limits of appropriations available, a health service program to promote and maintain the physical and mental fitness of employees under his jurisdiction.

"(b) A health service program may be established by contract or otherwise, but only--

"(1) after consultation with the Secretary of Health, Education, and Welfare and consideration of its recommendations; and

"(2) in localities where there are a sufficient number of employees to warrant providing the service.

"(c) A health service program is limited to--

"(1) treatment of on-the-job illness and dental conditions requiring emergency attention;

"(2) preemployment and other examinations;

"(3) referral of employees to private physicians and dentists; and

"(4) preventive programs relating to health.

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"(d) The Secretary of Health, Education, and Welfare, on request, shall review a health service program conducted under this section and shall submit comment and recommendations to the head of the agency concerned."

Implementing guidance concerning this statute has been promulgated in Bureau of the Budget (now Office of Management and Budget) Circular No. A-72, dated June 18, 1965, and in Federal Personnel Manual (FPM) chapter 792 (Instruction 147, February 1971). This guidance indicates that each agency head, after consultation with the Secretary of Health, Education, and Welfare (HEW), is authorized to establish, within the limits of available appropriations, an occupational health program with health services to be provided as he deems necessary. An agency head is further permitted to enter into an appropriate agreement with qualified private or public sources for professional services, including consulting services, or facilities, where neither the agency nor another Federal department or agency has adequate staff or facilities available.

Pursuant to the statute and implementing guidance, EPA has consulted with, and obtained the concurrence of HEW in the proposed health services program. In addition to concurring in the proposal, HEW provided several suggestions for EPA's consideration in the actual administration and implementation of the program.

Based on the foregoing information, EPA requests our ruling on whether the procurement of the psychological counseling services is authorized by 5 U. S. C. § 7901 and regulations implementing that statute.

The general authorization for agency health service programs stated in 5 U. S. C. § 7901(a), supra, includes the promotion and maintenance of the "mental fitness of employees," and the specific limitations in subsection 7901(c) include "preventive programs relating to health." Moreover, the Assistant Administrator's submission to us points out that the House and Senate reports on the legislation which provided the original source of 5 U. S. C. § 7901\*

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\*H. R. 2716, 79th Cong., approved August 8, 1946, ch. 865, 60 Stat. 903.

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included in their listing of "educational and preventive programs relating to health:"

"Mental hygiene. Cases of workers who show indications of emotional disturbances would be referred to the physician in charge of the health unit."

H. R. Rep. No. 516, 79th Cong., 1st Sess.,  
8 (1945); S. Rep. No. 743, 79th Cong., 1st Sess.,  
7 (1945).

The OMB Circular [§ 4(e)] and the FPM chapter 792-3 section 1-3(d)(1), supra, which implement the statute, define "preventive services" for purposes of 5 U.S.C. § 7901 as follows:

"Preventive services within the competence of the professional staff (1) to appraise and report work environment health hazards to departmental management as an aid in preventing and controlling health risks; (2) to provide health education to encourage employees to maintain personal health; and (3) to provide specific disease screening examinations and immunizations, as the department or agency head determines to be necessary."

In addition to the above-quoted statute, there are two other Statutes at Large that are relevant to the issue before us. First, section 201 of Pub. L. No. 91-616 (Dec. 31, 1970), of the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act of 1970, made the Civil Service Commission responsible for developing and maintaining, in cooperation with other Federal agencies, appropriate prevention, treatment and rehabilitation programs and services for alcohol abuse and alcoholism among Federal employees. Second, section 413 of Pub. L. No. 92-253 (Mar. 21, 1972) (21 U.S.C. § 1180(a)), the Drug Abuse Office and Treatment Act of 1972, made the Civil Service Commission responsible for developing and maintaining similar programs for drug abuse among Federal employees.

The Civil Service Commission has promulgated implementing instructions for Federal employee health services programs authorized by the above-cited statutory authorities in chapter 792.

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FPM (1969 ed.) and in FPM Supplement 792. The Commission's instructions authorize and encourage, but do not require, agency heads to establish and maintain occupational health programs for their employees. At the same time these instructions require agency heads to develop and maintain appropriate prevention, treatment and rehabilitation programs and services for alcoholism and drug abuse among their civilian employees. The Commission's guidelines provide that supervisor and employee counseling is to be an integral and essential element of these latter agency programs. In this regard paragraph S2-3b of FPMR Supplement 792-2, provides in part as follows:

"b. Counseling. In addition to emergency cases, the medical department should have the capability to provide consultation to supervisors in connection with their dealings with problem employees as well as to provide direct counseling to employees. Based on the supervisor's documentation of declining work performance, attendance problems, disruptive behavior etc., the medical department can become acquainted with the case history and be prepared to offer guidance to the supervisor and, when requested, counseling to the employee. In order to develop this kind of cooperative effort, clear working relationships should be spelled out for the medical department and supervisors concerned with employees with performance problems."

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"<sup>1</sup>The Commission recognizes that many small agencies lack the medical facilities to comply with this proposal. Where no local agency medical capability exists, agency program officials should seek the services of a neighboring Federal agency facility or community resource."  
(Emphasis added.)

In light of the above-quoted provision, employee counseling is clearly authorized for a wide range of work-related problems. Moreover, the Commission's instructions contemplate that where agencies find it impractical to develop an in-house counseling capability,

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such service may be procured from outside sources. However, the Assistant Administrator suggests that the applicability of these authorities to the instant counseling proposal--

"\* \* \* is not entirely clear in that the possibility of five follow-up counseling sessions with a view towards final resolution of an employee's psychological difficulties may be viewed as going beyond 'diagnostic and precautionary services \* \* \*.'"

From our study of the Commission's guidelines as set forth in chapter 792 of the FPM and FPM Supplement 792, we believe that the scope of employee psychological counseling is restricted to matters relating to problem identification, referral for treatment or rehabilitation to an appropriate service or resource, and followup to aid an employee in achieving an effective readjustment to his or her job during and after treatment. It should be noted that Commission guidelines prohibit employee treatment and rehabilitation at Government expense. Paragraph S6-3 of FPM Supplement 792-2 clearly places the responsibility for treatment and rehabilitation expenses on the employee by stating that, "\* \* \* an employee is responsible for the costs of treating his or her drinking or drug problem as with any other health condition."

In our opinion, the factors cited by the Assistant Administrator in his RFP do not necessarily mean that the proposed services should be oriented toward treatment and rehabilitation rather than diagnosis and/or prevention. It may well be that several counseling sessions are required in order to determine whether significant difficulties exist, and, if so, how serious they are. Moreover, we do not read the reference in the proposal to "final resolution of [the] problem" as suggesting that psychological problems will necessarily be remedied by the end of five sessions. Rather, the "final resolution" as described in the proposal is really nothing more than a final report on the counseling sessions, whatever the results may be. Finally, since it appears that the instant proposal could only be justified under the above-cited statutes and regulations as a diagnostic and/or preventive program, we must assume that the concurrence by HEW was based on this understanding.

Accordingly, we conclude that EPA may expend appropriated funds pertaining to "Agency and Regional Management" to procure

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the proposed employee counseling services under Pub. L. No. 91-616,  
Pub. L. No. 92-255, and 5 U.S.C. § 7901 and implementing regulations.

*W. K. ...*  
Deputy Comptroller General  
of the United States