



**Association for Behavioral
Health and Wellness**

*Advancing benefits and services
in mental health, substance use
and behavior change.*

February 24, 2014

Submitted via the Federal eRulemaking Portal: <http://www.regulations.gov>
Office of Health Plan Standards and Compliance Assistance Employee Benefits Security Administration
Room N-5653
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210
Attention: Excepted Benefits

Re: Amendments to Excepted Benefits Proposed Rule

Dear Sir or Madam:

The Association for Behavioral Health and Wellness (ABHW) is writing to offer comments in response to the Amendments to Excepted Benefits Proposed Rule. ABHW is an association of the nation's leading behavioral health and wellness companies. These companies provide an array of services related to mental health, substance use, employee assistance, disease management, and other health and wellness programs to approximately 125 million people in both the public and private sectors. ABHW and its member companies use their behavioral health expertise to improve health care outcomes for individuals and families across the health care spectrum. In particular, ABHW members are involved in management of behavioral health benefits under group health plans as managed behavioral health organizations (MBHOs).

We appreciate the Departments amendments to the excepted benefits regulations with respect to employee assistance programs (EAPs) and offer the following comments. The proposed rule sets forth criteria for an EAP to qualify as excepted benefits; the first criterion states that the EAP cannot provide significant benefits in the nature of medical care and invites comments on how to define "significant." ABHW members believe that the definition of "significant" should primarily take into account the type and scope of services offered. Specifically, we suggest you consider the limited scope of services provided by many EAPs rather than just the number of sessions. Most of these services are considered non-medical by any industry standard in part because EAP counselors don't make a diagnosis, they identify a problem and provide assistance in identifying the possible resources and options for an individual to address that problem which might include treatment with a medical professional that is beyond the scope of the EAP. Furthermore, we want to ensure that if a limit is set on the number of visits it is not an aggregate limit as an employee may be visiting the EAP for multiple issues.

The second criterion is that benefits cannot be "coordinated" with benefits under another group health plan. We request that the rule define and provide examples of what types of "coordination" would result in the EAP not being considered an excepted benefit. As you are no doubt aware, there is often coordination between an EAP and a group health plan for medical benefits which are provided by the same plan sponsor in order to facilitate appropriate access to benefits. The EAP may conduct an assessment of an individual

and determine that the nature of the problem requires medical intervention and treatment and the EAP would coordinate referral to an appropriate provider or resource for the identified problem. We suggest that such coordination not preclude treatment of an EAP as an excepted benefit. We believe the intent is to preclude coordination of terms and conditions of the benefits under the EAP with the terms and conditions of another group health plan such as the requirement that a plan participant utilize the EAP prior to accessing coverage under their medical plan.

We also request examples of what is meant by the second condition for this criterion (participant eligibility for benefits under the EAP must not be dependent on participation in another group health plan) and the third criterion (the EAP must not be financed by another group health plan). Additionally, we would like an example confirming that an EAP that is embedded/included within a life or long term disability insurance or another group health plan for the benefit of employees enrolled in that group health plan with an internal transfer to pay for the EAP does not violate condition two and three. Furthermore, some of our members have union and other plans where the EAP is offered as a unified benefit with the group health plan; we assume this will remain permissible under the proposed rule and appreciate the Departments verifying this position.

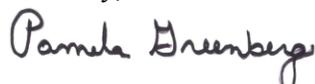
The third criterion is that no employee premiums or contributions be required to participate in the EAP. ABHW member companies would like to know if this applies for purposes of an EAP that is offered to COBRA beneficiaries? Several employers do charge a COBRA premium for those individuals selecting an EAP while on COBRA. We note that the third criterion could be interpreted to conflict with the W-2 guidance under the ACA, which indicates that employers are required to include the cost of EAP on an employee's W2 if the employer charges for EAP under COBRA.

The fourth criterion is that there is no cost sharing under the EAP and we have no comments on that criterion.

It is our understanding that the proposed rule puts EAPs into the second category of excepted benefits, Section 2791 (c)(2)(C). If that is correct, we are concerned that these EAPs that qualify as excepted benefits that fall within Section 2791(c)(2)(C) are required to comply with the Health Insurance Portability and Accountable Act (HIPAA) standard transaction rules/administrative simplification rules, including Electronic Fund Transfer. The HIPAA standard transaction rules are burdensome and onerous; additionally, many of these rules, such as the eligibility and enrollment rules and standard transaction rules don't make sense to apply to EAPs. For example, many EAPs do not have any enrollment or eligibility process but utilize assumed eligibility. Application of these standards to EAPs would increase the cost of these benefits substantially.

Thank you for your consideration of the issues raised in our letter. If you have any questions or would like to discuss any of these issues with ABHW, please contact Pamela Greenberg, MPP, President and CEO, at (202) 449-7660 or greenberg@abhw.org.

Sincerely,



Pamela Greenberg, MPP
President and CEO

Cc:
Amy Turner