



**Association for Behavioral  
Health and Wellness**

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

September 21, 2010

Submitted via the Federal eRulemaking Portal: <http://www.regulations.gov>

Office of Health Plan Standards and Compliance Assistance, Employee Benefits Security Administration  
Attention: RIN 1210—AB45  
Room N-5653, U.S. Department of Labor  
200 Constitution Ave., NW  
Washington, DC 20210

**Re: Interim Final Rules for Group Health Plans and Health Insurance Issuers Relating to Internal Claims and Appeals and External Review Processes Under the Patient Protection and Affordable Care Act**

Dear Sir or Madam:

The Association for Behavioral Health and Wellness (ABHW) is writing to offer comments in response to the interim final rule ("IFR") for Group Health Plans and Health Insurance Issuers Relating to Internal Claims and Appeals and External Review Processes Under the Patient Protection and Affordable Care Act.

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 over 150 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 all involved in management of behavioral health benefits under group health plans as managed behavioral health organizations (MBHOs).

ABHW requests clarification that the grace period for enforcement applies to all health plans governed by the IFR. The September 23, 2010 is an extremely tight timeframe. MBHOs will need to change their correspondence for all states in which they operate and extensive changes in IT programming will need to be made to incorporate the required new data elements. We appreciate the recent guidance allowing for a grace period in the implementation of certain provisions of the IFR. This will give plans the necessary time it takes to fully comply with the requirements of the IFR.

ABHW asks that inclusion of the diagnosis code on the denial letters be omitted or made optional. We suggest that the IFR require sufficient information to identify the claim being denied and leave it to the plan's discretion as to whether or not to include a diagnosis code. While diagnosis may not be an issue for all conditions, it is often an issue for a behavioral health diagnoses. Furthermore, behavioral health diagnoses often change; the admission diagnosis is often different from the discharge diagnosis which is often different from the diagnosis given by the outpatient provider. Disclosure of diagnosis will add to the confusion and increases the risk and availability of private health information. Also, denials are made to a specific procedure or service not to a diagnosis; MBHOs do not diagnose their members.

ABHW members appreciate the model notices and request additional elements. We are pleased to have the model notices and request that the Agencies add accreditation elements that are currently not included. There are several elements that are currently not included in the model notices that ABHW would like to see added. The suggested

elements for inclusion are required by the accrediting bodies (NCQA, URAC, etc.); the majority of ABHW members voluntarily seek accreditation from one or more of these entities. In addition, a few of the suggested additions are elements that are currently a requirement under ERISA.

For all model notices we would like to see the addition of the following:

- the timeframe to request the appeal and the turnaround time for a standard appeal;
- the right to obtain the benefit provision or guideline used in the decision process free of charge; and,
- an area for information that the claimant may provide to “perfect the claim”.

For the model notice of adverse benefit determination we would like the provider’s right to a peer-to-peer discussion added to the notice. ABHW also requests that the reviewer’s title and qualifications be added to the model notice of final internal adverse benefit determination.

ABHW requests clarification that the IFR does not apply to employee assistance programs (EAPs). Many of ABHW members provide employee assistance programs to their customers. To the extent that these EAPs are an add-on to the group health plan they should not be required to comply with the IFR; EAPs are not intended to be health benefits. The National Business Group on Health, in its report entitled “An Employer’s Guide to Employee Assistance Programs”, uses the following definition of EAPs “Employee Assistance Programs provide strategic analysis, recommendations, and consultation throughout an organization to enhance its performance, culture, and business success. These enhancements are accomplished by professionally trained behavioral and/or psychological experts who apply the principles of human behavior with management, employees, and their families, as well as workplace situations to optimize the organization’s human capital.” Requiring EAPs to comply with the IFR is difficult, costly and inappropriate given the services that EAPs provide.

ABHW asks the regulators not to create a different standard of appeal for the individual market. The group market has a two-level appeal process and we encourage the regulators to have the same standard for the individual market. A different standard of appeal for each market will be confusing and require plans to identify who is in the individual market and who is in the group market so that they can ensure that those in the individual market are restricted to one internal appeal. Having one standard of appeals for both the individual and group markets will streamline internal processes and give consumers equal access to an internal appeals process.

ABHW appreciates the opportunity to provide the above comments on the IFR. Thank you for this opportunity and your consideration of our concerns. Please feel free to contact me at [greenberg@abhw.org](mailto:greenberg@abhw.org) or (202) 756-7726 if you have any questions.

Respectfully submitted,



Pamela Greenberg, MPP  
President and CEO