



April 26, 2010

Office of Health Plan Standards and Compliance Assistance
Employee Benefits Security Administration
Room N-5653
US Department of Labor
Attention: RIN 1210-AB30
200 Constitution Avenue NW
Washington, DC 20210

Centers for Medicare and Medicaid Services
Department of Health and Human Services
Attention: CMS-4140-IFC
P.O. Box 8016
Baltimore, MD 21244-1850

U.S. Department of the Treasury
Internal Revenue Service
Attention: CC:PA:LPD:PR (Reg-120692-09)
Room 5205
P.O. Box 7604
Ben Franklin Station
Washington, DC 20044

Dear Sir or Madam:

I write on behalf of the Employee Assistance Society of North America (EASNA), a tri-national association whose members consist of individuals, organizations, employers, and students in the US, Canada and Mexico interested in advancing knowledge, research, and best practices toward achieving healthy and productive workplaces. We appreciate the opportunity to comment on the Interim Final Rules under the Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Act of 2008 (IFR). EASNA was very supportive of the Act and was very pleased when Congress passed this comprehensive parity law. However, we have concerns with the IFR as it is currently written and as it pertains to Employee Assistance Programs (EAPs).

Specifically, EASNA is concerned with the IFR section that states that when an employer chooses not to offer any mental health and substance abuse health benefits, it is prohibited from offering an employee assistance program unless that employee assistance program is in parity with the medical surgical benefits. This regulation has the effect of depriving that employer of an EAP because no EAP could ever be in parity

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with a medical surgical health plan. We maintain that this regulation has the effect of banning an EAP for that employer.

As shown here, the IRS correctly described EAPs in its bulletin regarding EAPs in the preventative portion of Health Savings Accounts (IRS: 2004-33; Notice 2004-50 Health Savings Accounts Additional questions and Answers):

An employer offers a program that provides employees with benefits under an EAP, regardless of enrollment in a health plan. The EAP is specifically designed to assist the employer in improving productivity by helping employees identify and resolve personal and work concerns that affect job performance and the work environment. The benefits consist primarily of free or low-cost confidential short-term counseling to identify an employee's problem that may affect job performance and, when appropriate, referrals to an outside organization, facility or program to assist the employee in resolving the problem. The issues addressed during the short-term counseling include, but are not limited to, substance abuse, alcoholism, mental health or emotional disorders, financial or legal difficulties, and dependent care needs. This EAP is not a "health plan" under section 223(c)(1) because it does not provide significant benefits in the nature of medical care or treatment.

The differences between EAPs and mental health and substance abuse health benefits are profound. EAPs are offered to all employees irrespective of health care coverage. Typically, anyone in the employee's household is eligible to receive the EAP services, including au-pares, in-laws, exchange students; anyone living in the household who could potentially affect the employee's work productivity. In many EAPs a mental health or substance abuse diagnosis is not needed to receive services; a position consistent with the preventive, early problem identification and resolution foci of EAPs. Additionally, no medical necessity criteria are utilized and no medical management procedures are employed. Inpatient, partial hospitalization, residential treatment center, and intensive outpatient programs, common levels of care offered by mental health and substance abuse health benefits, are never offered in an EAP program.

It is a rare EAP program that includes psychiatrists in its network of EAP counselors. EAP are designed to have face-to face session limits (1-3, 1-5, 1-8 sessions) making them fundamentally incompatible with the unlimited sessions likely to result from parity. Unlike health plans that focus on the delivery of health care services to the covered individual, the focus of EAP is on the health and productivity of the entire employer organization. EAPs offer a number of unique employer-oriented services including but not limited to organizational consultations, conflict resolution services, consultation to manager and supervisors regarding workplace issue, critical incident stress debriefings, disability support services, return to work conferences, fitness for duty evaluations, workplace trainings, health fairs, disaster planning, ethics and compliance services and workplace culture analysis and benchmarking.

EASNA understands that the Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Act of 2008 did not mandate that an employer offer any coverage whatsoever for mental health and substance abuse benefits. This aspect of the statute appears to respect the independence of employers to consider how best to recruit, retain and maintain a productive workforce and offer competitive products and services to the marketplace. The proposed regulations pertaining to EAPs are an understandable attempt to prevent employers from substituting EAP services for mental health and substance abuse services. However, we believe that an employer that is considering offering no mental health and substance abuse benefits but wanting to offer an EAP will simply not offer the EAP either, if this regulation stands. Linking EAPs to health plans in the IFR and to deny employers the freedom to implement EAPs whose focus is so fundamentally different than health care coverage is in our opinion counterproductive and harmful to the value of EAP services, the industry we represent and the employers we support.

April 26, 2010
Page -3-

EASNA urges you to reissue these regulations in a timely manner and remove this misguided prohibition on EAP deployment so that US employers can take advantage of a powerful employer-based service that helps keep US companies productive and competitive in an increasingly competitive global marketplace.

Thank you for your consideration of our comments.

Respectfully submitted,

A handwritten signature in black ink that reads "Philip H. Evans". The signature is written in a cursive style with a long horizontal line extending from the end of the name.

Philip H. Evans
President