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## Employee Assistance Professionals Association

*Sponsor of the CEAP Certification Program*

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April 30, 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.

To Whom It May Concern:

I write today in my role as President of the Employee Assistance Professionals Association (EAPA). We are the largest and longest standing employee assistance organization in the world, having been incorporated in 1972, and are proud to represent more than 3300 professional members in the US and more than 30 other countries around the world. I would like to take this opportunity to comment on behalf of our association regarding the Interim Final Rules under the Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Act of 2008.

While EAPA has long supported parity for both mental health and substance abuse treatment, we have concerns with the Interim Final Rules as they are currently written concerning Employee Assistance Programs (EAPs). Our reading of the interim final rules indicates that EAP's are considered to be a group health plan and a mental health/substance abuse benefit. We believe this characterization to be in error and ask that it be clarified and corrected in the Final Rules.

In 1981, EAPA first published professional standards that included a definition of an employee assistance program and later added a description of EA Core Technology that further outlines the field. Per this well-established definition, an EAP is “a set of professional services specifically designed to improve and/or maintain the productivity and healthy functioning of the workplace and to address a work organization’s particular business needs through the application of specialized knowledge and expertise about human behavior and mental health.” (EAPA Program Standards, 2009). More specifically, an EAP is a workplace program designed to assist: (1) work organizations in addressing productivity issues, and (2) "employee clients" in identifying and resolving personal concerns, including health, marital, family, financial, alcohol, drug, legal, emotional, stress, or other personal issues that may affect job performance. The EAP Core Technology represents the essential components of the employee assistance (EA) profession and reflects the performance and productivity focus that EAPs bring to employers and the workforce. These components combine to create a unique approach to addressing work-organization productivity issues and "employee client" personal concerns affecting job performance. The EAP Core Technology is:

- (1) Consultation with, training of, and assistance to work organization leadership (managers, supervisors, and union officials) seeking to manage troubled employees, enhance the work environment, and improve employee job performance;
- (2) Active promotion of the availability of EA services to employees, their family members, and the work organization.
- (3) Confidential and timely problem identification/assessment services for employee clients with personal concerns that may affect job performance;
- (4) Use of constructive confrontation, motivation, and short-term intervention with employee clients to address problems that affect job performance;
- (5) Referral of employee clients for diagnosis, treatment, and assistance, as well as case monitoring and follow-up services;
- (6) Assisting work organizations in establishing and maintaining effective relations with treatment and other service providers, and in managing provider contracts;
- (7) Consultation to work organizations to encourage availability of and employee access to health benefits covering medical and behavioral problems including, but not limited to, alcoholism, drug abuse, and mental and emotional disorders; and
- (8) Evaluation of the effects of EA services on work organizations and individual job performance.

Based on this well-established and well-researched definition, employee assistance programs do not constitute mental health/substance abuse treatment and should not be considered a group health plan. EAPs remain one of the federally mandated requirements for those organizations that must comply with the Drug Free Workplace. EAPs have a breadth of responsibility and functions in the workplace that bring value to employers

and employees far beyond their role in assessing and referring employees with mental health issues and substance use disorders. Because of the EAP consultation role with organization leadership, even organizations that offer more than one health plan choice to employees have a single EAP, which provides services regardless of health plan enrollment. To consider EAPs as group health plans under this Interim Final Rule does a disservice to the many private and public employers who have benefited from their EAP's contributions to both labor and management in the enhancement of an employee's performance and productivity in the workplace.

In recognition that the EAP Core Technology reflects a broad spectrum of workplace-based services, of which mental health and substance abuse assessment and referral are simply one, the Department of Labor issued an opinion in 1991 that stated that EAPs were not an employee welfare benefit plan. The IRS specifically addressed this issue previously by stating "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. 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." This view also has been supported by the State of California, where the Knox-Keene law regulates health plans and specifically excludes EAPs who offer traditionally defined EA services. Texas and Ohio have made similar determinations.

The existing range of EA structures and functional differences warrant a thoughtful delineation and review rather than rendering all EA structures akin to the provision of health care. In order to continue to perform the vital role that EAPs play in today's workplace, the employee assistance program must be seen as a separate entity from the group health plan in the Final Rules. We urge regulators to use the above referenced definitions when making this distinction and to affirm that EAPs are not, in and of themselves, health plans or mental health/substance abuse treatment as defined under the rules. Given the range of offerings available from some EAPs, we would further suggest that EAPs who opt to offer additional services to those we outlined are already addressed in previous regulations such as ERISA and that oversight should continue. We are prepared to provide additional supporting information should you require it.

Thank you for your consideration of our comments.

Respectfully submitted,

David G. Worster, ACSW, LICSW, CEAP  
President - EAPA