

May 2, 2011

The Honorable Phyllis C. Borzi
Office of Health Plan Standards and Compliance
Assistance
Employee Benefits Security Administration
Room N-5653
US Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210
Attn: RIN 1210-AB45

The Honorable Michael F. Mundaca
Internal Revenue Service
US Department of the Treasury
Room 5205
P.O. Box 7604
Ben Franklin Station
Washington, DC 20044
Attn: CC:PA:LPD:PR (REG-125592-10)

Mr. Steven Larsen
Center for Consumer Information and Insurance
Oversight
Center for Medicare and Medicaid Services
Department of Health and Human Services
7500 Security Boulevard
Baltimore, MD 21244
Attn: CCIIO-99930IFC

RE: Interim Final Rules Relating to Internal Claims and Appeals and External Review Process (RIN-0991-AB70)

Dear Sirs and Madame:

We, the undersigned organizations, write to share our concern about a provision in the Interim Final Rule¹ Relating to Internal Claims and Appeals and External Review Processes that would violate adolescents' and young adults' reasonable expectation of confidentiality for sensitive physical and mental health services. Specifically, we believe the Interim Final Rule² mandating that all health plans and insurers notify health plan enrollees and policyholders when there is an adverse benefit determination (ABD) and include detailed diagnostic and treatment information will cause many adolescents and young adults to forgo services that are essential to their own health and, potentially, the health of their communities. Although the formal comment period for the Interim Final Rule is closed, we believe that the confidentiality concerns of health care organizations and consumers have not been sufficiently heard and ask that you address this important issue prior to the implementation of the Interim Final Rule.

Studies consistently show that confidentiality is among the foremost factors in determining whether adolescents will seek necessary health care services, especially screening and treatment for sexually transmitted diseases, family planning services, and mental health and substance abuse screening and treatment services. Since privately insured adolescents, and now young adults up to age 26, are likely to be covered under their parents' policy, sending ABD notices to the plan enrollee or policyholder with specific diagnostic and treatment codes will violate their reasonable expectations for confidential care. Multiple medical associations, including the American Academy of Pediatrics, the American Academy of Child and Adolescent Psychiatry, the Society of Adolescent Health and Medicine, the American Congress of Obstetricians and Gynecologists, and the American Medical Association, have formal policy statements supporting adolescents' need to receive confidential health care services. Significantly, too, most states recognize the importance of adolescent confidentiality and have granted minors the legal right to obtain certain sensitive services independently without parental consent. In addition, under federal HIPAA privacy regulations information about treatment of a patient over 18 years of age ordinarily cannot be shared with a parent without the patient's consent.

We recognize that the intent of the Affordable Care Act and the Interim Final Rule is to establish important protections for consumers and to ensure that health plan enrollees and policyholders receive information that will enable them to appeal adverse benefit determinations. We recognize also the positive benefit of parental involvement in an adolescent's health care. However, for certain services, and certainly at certain ages, confidentiality becomes a critical

concern. Also, of course, there are situations in which any indication that the adolescent or young adult had sought services on their own could place them in jeopardy of abuse, either verbal or physical.

To protect adolescent and young adult consumers and ensure that they are not deterred from receiving necessary physical and mental health care, we respectfully suggest several changes to the Interim Final Rule.

1. Remove the requirement that specific diagnostic and treatment codes be included in ABD notices. This would ensure that the nature of an office visit or service by a dependent adolescent or young adult is not revealed to the plan enrollee or policyholder and also would prevent violations of federal and state privacy and confidentiality laws for health care consumers. Like the National Partnership for Women and Families, which addressed this issue in its comments, we believe that the serious confidentiality violations that may result from including diagnostic and procedure codes on ABD notices must be addressed in the rulemaking process. Diagnostic and treatment information could be requested, as needed, to pursue a grievance or appeal.

2. Require that ABD notices for care provided to dependents age 18 and older be sent directly to them, via email if requested, and not to the health plan enrollee or policyholder. This would establish a consistent policy with HIPAA, which ordinarily does not permit the sharing of specific medical information by health care providers with parents for anyone 18 years of age or older without the patient's consent.

3. Require health plans and insurers to establish a simple method for health care providers to designate on a claim form that maintaining confidentiality for an adolescent under age 18 is imperative and that an ABD should not be sent to the health plan enrollee or policyholder. This designation would be used on a case-by-case basis when the health care provider has sufficient reason to believe that sending an ABD notice to the parent or guardian, even without specific diagnostic and treatment information, would cause the adolescent to forgo necessary care or withhold critical health information. It could be used for all physical and mental health services for which a minor, consistent with state laws, is able to consent. We recognize that there are provider payment issues that would have to be addressed but believe that this requirement is critical to ensuring that all adolescents and young adults are able to receive essential care.

We would welcome the opportunity to discuss these suggestions with you and your staff. If you require any additional information or have any questions, please contact Harriette Fox at The National Alliance to Advance Adolescent Health, by email hfox@thenationalalliance.org or by phone 202-223-1500.

Sincerely,

American Academy of Pediatrics
American College Health Association
American Congress of Obstetricians and Gynecologists
Division of Adolescent/Young Adult Medicine, Children's Hospital Boston, Boston, MA
HiTOPS Adolescent Health Clinic, Princeton, NJ
Mental Health America
Mount Sinai Adolescent Health Center, New York, NY
National Assembly on School-Based Health Care
National Association of County and City Health Officials
National Association of Pediatric Nurse Practitioners
National Center for Youth Law
National Family Planning & Reproductive Health Association
National Latina Health Network
Partnership for Prevention
Society for Adolescent Health and Medicine
The National Alliance to Advance Adolescent Health
University of Maryland Adolescent and Young Adult Medicine Clinic, Baltimore, MD
West Suburban Teen Clinic, Excelsior, MN

¹ 75 Federal Register, July 23, 2010, p 43330

² Ibid., p 43333