

REGULATION & IMPLICATIONS FOR THE FUTURE OF EAP

by Tamara Cagney, CEAP

California ALMACANs have been struggling with their state's efforts to regulate employee assistance programs for the last three years. Their efforts have resulted in a limited exemption from Knox Keene regulation in the state.

HOW DID WE GET HERE?

The Department of Corporations (DOC) in the State of California was approached several years ago by firms providing psychiatric and chemical dependency treatment. These organizations had panels of psychologists and psychiatrists that provided services on a pre-paid basis to employers or other groups. They had been in competition with many of the state's EAPs, but unlike what we normally think of as employee assistance programs, these organizations were regulated by the Department of Corporations in the State of California. They were viewed as specialized health care plans or mental health HMOs. They fell under the Knox Keene regulations.

These regulations were originally drawn up in the 1970's to govern HMOs within the state. EAPs had never been seen as falling under the regulatory justification of this act or DOC. As these specialized health plans competed with other EAPs, they became concerned that they were under the onus of these regulations while other firms were not. The specialized health care plans proceeded to convince the Department of Corporations that what employee assistance programs did was to provide treatment and health care services

to employees. They also pointed out that employee assistance programs were not regulated, licensed or certified by anyone. The Department of Corporations felt that this lack of accountability and oversight did not protect the consumer and issued cease and desist orders to those employee assistance firms that they identified as operating in the state outside of the Knox Keene regulatory process. That's where ALMACA got involved.

ALMACANs for the last several years have been struggling to educate the Department of Corporations as to the difference between providing mental health treatment and providing an employee assistance program in industry. The question became "are EAPs specialized health care plans?" Or the preferred question: "are specialized health care plans EAPs?" It is not certain that the distinction has ever before been made clear but a limited exemption from Knox Keene regulations resulted and only after many hours of work and testimony by ALMACANs.

A CONTINUUM OF SERVICES

The following is a continuum of the employee assistance services now available in California following application of

Knox Keene HMO regulations to employee assistance programs. Efforts to convince the Department of Corporations that employee assistance programs did not fall under that regulation at all were unsuccessful. However, an area was carved out for traditional EAPs.

The continuum of EAP services begins with unregulated employee assistance programs. Next are those programs that fall under the regulation, some regulated employee assistance programs who can file for an exemption from regulation and those who must be Knox Keene licensed.

The continuum presents some unusual structures for employee assistance programs that may represent what employee assistance programs will look like in the State of California within the next five years and also what EAPs may evolve into in the rest of the country by the year 2000. The continuum of employee assistance services now available in California represents quite a variety.

Unregulated EAPs

Unregulated activities include information and referral lines; internal employee assistance programs where the staff of the employee assistance program is employed by the organization, and fee-for-service employee assistance programs. Many fee-for-service employee assistance programs

CONTINUUM OF EMPLOYEE ASSISTANCE SERVICES IN THE STATE OF CALIFORNIA

	UNREGULATED EMPLOYEE ASSISTANCE ACTIVITIES		ELIGIBLE TO FILE FOR EXEMPTION FROM REGULATION		KNOX KEENE REGULATED EAP ACTIVITY KNOX KEENE LICENSE REQUIRED
Information and Referral Line	Internal EAP —Staff employed by organization or union <u>Traditional Services</u> or <u>Traditional Services</u> + <u>Therapy</u>	Fee For Service and Administrative Services Only (ASO Contracts) Internal or External	External EAP 1-3 Sessions/ 6 months Prepaid <u>Traditional Services</u> • Assessment & Referral • Education & Training • Follow-up • Case Mgmt • Program Evaluation	External EAP 3+ Sessions <u>Traditional Services</u> + <u>Therapy</u> (Most with closed panel of providers)	Specialized Health Care Plan* 3+ Sessions <u>Traditional Services</u> + <u>Therapy Treatment & Insurance, i.e.,</u> • Therapy, Treatment, Insurance • Outpatient Counseling 5 visits — 100% 6-10 visits — 85% 11-15 visits — 75% etc. • Intensive Outpatient • Residential Treatment • Inpatient Treatment for psychological and chemical dependency

*These plans are now considered to be EAPs. They market at-risk products, such as insurance as well as traditional EAP.

have resulted directly from the application of Knox Keene regulation to EAPs.

The Knox Keene regulations apply to all pre-paid or periodic paid employee assistance programs. Some of the smaller organizations are restructuring their services to be on a fee-for-service basis. Some of them are structuring ASO, or administrative service only, contracts where the pre-paid portion is for consultation, policy development, or education and training. The employee assistance services, direct client contracts such as assessment and referral are paid for on a fee-for-service basis. Many people hope to avoid falling under the Knox Keene regulations in that manner.

The major problem with the above-mentioned format is that it may not be competitive in the marketplace. Many organizations want a pre-paid per capita employee assistance contract, because they do not have the ability to administer a benefits section or a fee-for-service reimbursement to employee assistance providers. It remains to be seen how well that model fares in a competitive marketplace.

Eligible to File for Exemption

Most other forms of employee assistance programs in California now fall under the Knox Keene regulations. ALMACANs, however, have won the right to an exemption. The exemption must be applied for as much as licensure must be applied for. The exemption from Knox Keene regulation is applicable to those external employee assistance programs who will provide assessment and referral services only. No therapy can be provided. Employees can be seen one to three times but no more than three times in a six-month period. These plans are pre-paid or periodic paid, the regulations cannot be avoided by charging a capitated amount after services have been provided. That method falls under the periodic paid definition.

People working in employee assistance programs that come under the exemption must be licensed or certified. The State has, however, recognized the alcohol and drug certification as well as the ALMACA certification for employee assistance professionals.

CONCERNS FOR EXEMPT PLANS

The Department of Corporations is very concerned with several areas of employee assistance, particularly in firms operating under the exemption. They want to guarantee that there are no therapeutic services provided, that all services provided by these firms are assessment, referral, and traditional employee assistance services such as employee education, supervisory training, management consultation, case follow-up, case management, program evaluation.

They are also very concerned with advertising. Employee assistance programs operating under the exemption must not imply that therapeutic services are delivered through an employee assistance program. It must be very clear that these are assessment and referral services only. Any mention

of diagnosis, counseling, problem solving, or therapy must be avoided.

The Department of Corporations is also very concerned with apparent conflict of interest. Any employee assistance program professional who refers to any professional in whom they have a financial interest must disclose that financial interest on two levels. The two levels of disclosure include: 1) disclosure to the contracting organization in the contract that there is a financial interest to the employee assistance program resulting from referrals to therapists they contract with or who work for them. 2) The second level of disclosure is with the employee. There must be a signed, informed consent in the employee's file indicating the employee was informed that the EAP program stood to gain financially from the employee's continuing on in therapy with a particular counselor.

Referral to therapists connected with the EAP was not ruled out entirely by DOC because there are areas of California where there are not adequate therapy services available leaving the professionals in an employee assistance program as the most appropriate or the only services available. DOC did not want to exclude that eventuality completely.

KNOX KEENE LICENSURE REQUIRED

Those EAPs requiring Knox Keene licenses are any employee assistance programs that provide therapeutic services. The State of California has basically defined therapeutic services as seeing anyone over three times. So employee assistance programs that provide assessment, referral and brief problem solving must be licensed in the State of California. This is a very familiar model of employee assistance service where employers contract with employee assistance providers to provide one to five or one to ten or one to fifteen sessions. The employee assistance services that are delivered are traditional services or brief problem solving therapy or ongoing

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counseling. No matter where these firms are based, if they provide services in California, they fall under the regulation and must apply for exemption or licensure.

"No matter where external EAP firms are based, if they provide services in California, they fall under the regulation, and must apply for exemption or licensure."

At the far end of the continuum are other EAP models requiring Knox Keene licenses such as the specialized health care plans. These plans provide not only traditional employee assistance services but also therapy. They often have a panel of providers for referral. An example of services that could be provided by a specialized health care plan would be traditional employee assistance services of assessment, referral, training and education, and then therapeutic services and at

risk products such as insurance coverage for hospitalization.

One model of specialized health care plan services would include outpatient psychological services that are reimbursed on a graduated schedule. The first five visits would be 100% pre-paid, the next five visits would be 85% pre-paid with the employee making up the difference, the next five visits might be 75% pre-paid, the next five visits 50% pre-paid, the remaining visits would be at 50% pre-paid. These visits would be with panel providers.

Specialized health care plans, to a great extent, are covering intensive outpatient treatment programs for chemical dependency at 100%. They are covering residential treatment programs as well as hospital-based treatment programs for alcoholism and drug addiction at 100-80%. The consideration making these plans particularly unique is the employers' ability to purchase insurance coverage for alcohol, drug, and mental health services when their current insurance does not include such coverage. Specialized health care plans therefore are writing contracts to provide not only traditional EAP services and outpatient counseling for psychological problems but also contracts that will cover all in-

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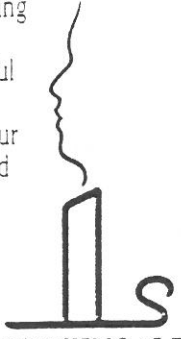
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This model would be particularly attractive to an employer who has no alcohol, drug, or mental health coverage or has very limited coverage through an existing HMO. By contracting with this EAP provider, they would be able to provide services for the case finding resulting from the employee assistance program. Under different circumstances, this would be the answer to many prayers of EAPs who have struggled for years with inadequate insurance coverage.

Many of the people who are running the specialized health care plans have a very strong insurance background. Their strengths lie in constructing insurance programs to provide outpatient and inpatient coverage and also in case management, cost containment and the area of managed health care. Since the implementation of the Knox Keene exemption, some of the specialized health care plans have been investigating the possibility of merging with established employee assistance programs. This would bring the recognized strength of the EAP in providing traditional employee assistance together with the specialized health care plans' strength of managed health care and insurance. This might result in an unbeatable combination cornering a sizeable portion of the market in the State of California.

Several specialized health care plans still exist in the state that do not provide adequate employee assistance programs but merely provide an easy access for employees to therapists. Some of the specialized health care plans do not provide the organizational services, the training and education, supervisory training, and ability for constructive confrontation that we feel is so integral to employee assistance programming.

TRADITIONAL EAPs

During the Knox Keene hearings, ALMACA presented the traditional model of employee assistance programs which provides assessment and referral only. A traditional employee assistance program was presented as being one where no therapeutic alliance is established between the EAP counselor and the employee. Also stressed were the intervention and organizational services provided by EAPs and not provided by specialized health care plans.

One hope for the traditional model of employee assistance programs is that many employers may find the cost of the specialized health care plans prohibitive. Those plans range from \$5 to over \$30 per employee per month to provide a full range of services. One of the drawbacks, however, is that the traditional employee assistance programs operating on a fee-for-service basis or under the Knox Keene exemption are unable to provide the therapeutic services that many employers are demanding now in the marketplace.

Several EAPs have talked about continuing to see employees in follow-up sessions. The exemption does not preclude

EAPs from seeing employees in follow-up sessions. It limits only the assessment and referral sessions to three. Employee assistance programs, theoretically, can offer an unlimited availability of follow-up sessions. The drawback, however, is that EAPs are basing their rates on only 3 visits not follow-up sessions. So providing extensive follow-up sessions probably becomes financially impossible without remuneration.

It may also prove naive for EAPs to feel that disclosing financial interest allows continued referral to inhouse therapists or therapists under other financial arrangement while still operating within the boundaries of the exemption. This is one area that the Department of Corporations will be looking at very closely. Exempt plans will be audited just as licensed plans will be audited; their record keeping, their finances, their referral practices.

The Knox Keene exemption does not only affect employee assistance contractors, it may also have widespread impact on California service providers. Many specialized health care plans refer only to those inpatient and residential treatment programs with which they have preferred provider agreements. The majority of the specialized health care plans operating as employee assistance programs in the state also do not use master level therapists, such as marriage, family, and child counselors. They do use Ph.D. psychologists, MD psychiatrists and some social workers. There is concern about the provider panels not reflecting the cultural and ethnic diversity of the populations being served and also about the lack of chemical dependency training of the professionals providing services.

It is feared that many of the small, EAP operations in California will not be in existence in five years. For many it does not make financial sense to apply for the Knox Keene licensure. It also remains to be seen how difficult the exemption application process will become. That avenue intended to provide regulatory relief may become bureaucratically over-complicated, limiting the number of employee assistance programs that are able to obtain the exemption. It is also feared that the emphasis on early intervention, constructive confrontation, and alcohol and drug issues, will disappear completely.

Obviously, it remains to be seen what the true impact of regulating employee assistance programs in the State of California will be. Employee assistance program professionals who imagine that they can reconstruct their programs to fee-for-service may find themselves not competitive. The same may hold true for firms operating under the exemption that cannot provide any therapeutic services.

California ALMACANs will continue to scrutinize the implementation of regulation on EAPs and in turn pass that information onto the rest of ALMACA. ALMACANs around the country should be similarly watchful. EAP regulation along the same lines as the regulation of health maintenance organizations, may well come to the forefront of legislative interest for other state governments. □