



Integrative Healthcare Policy Consortium FAQs Frequently Asked Questions about Section 2706

Section 2706 of the Affordable Care Act (ACA) is titled “Nondiscrimination in Health Care.” It requires that insurers include and reimburse licensed health care providers in health insurance plans. The primary sponsor and supporter of the section is Senator Tom Harkin (D-Iowa). The IHPC FAQ is written for licensed and certified practitioners to address general questions related to the interpretation and implementation of Section 2706 of the Affordable Care Act. The author of the FAQ is the Hon. Deborah Senn, JD. The IHPC FAQ’s are based on the original version of FAQ for the American Association of Naturopathic Physicians, also written by Ms. Senn.

The ACA nondiscrimination provision states: *“A group health plan and a health insurance issuer offering group or individual health insurance coverage shall not discriminate with respect to participation under the plan or coverage against any health care provider who is acting within the scope of that provider’s license or certification under applicable State law. This section shall not require that a group health plan or health insurance issuer contract with any health care provider willing to abide by the terms and conditions for participation established by the plan or issuer. Nothing in this section shall be construed as preventing a group health plan, a health insurance issuer, or the Secretary from establishing varying reimbursement rates based on quality or performance measures.”*

FAQs

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Q1. Why is the nondiscrimination provision important?

A1. The nondiscrimination provision provides a unique opportunity to create affordable access to CAM providers for their patients. Full interpretation and implementation of the nondiscrimination provision would benefit patients and community health as a whole, reduce costs, and incidentally, benefit providers.

Q2. When does the nondiscrimination provision go into effect?

A2. The nondiscrimination provision goes into effect on January 1, 2014. Enrollment in “Exchange” plans can start in October, 2013.

Q3. What types of health plans does it cover?

A3. The nondiscrimination provision minimally applies to market-based healthcare plans and insurance plans bought on the “health insurance exchanges,” meaning, any insurance plan in your state. That also includes any self-insured plan in your state (aka. ERISA) which are generally administered by large companies such as Boeing, Microsoft, Safeway, etc.

Q4. Are “non-grandfathered plans” covered?

A4. The passage of time and plan changes will most likely answer questions about grandfathered plans.

Q5. What types of CAM and integrative health care providers does it cover?

A5. It covers any state licensed or state certified healthcare provider. This generally means the inclusion of chiropractors, M.D.’s, naturopathic physicians, acupuncturists, massage therapists, osteopaths, optometrists, nurse practitioners and licensed or direct entry midwives and podiatrists, as long as they are licensed by the state.

Q6. How does the nondiscrimination provision work?

A6. Here’s the first and most important sentence of the nondiscrimination provision:

“A group health plan and a health insurance issuer offering group or individual health insurance coverage shall not discriminate with respect to participation under the plan or coverage against any health care provider who is acting within the scope of that provider’s license or certification under applicable State law.”

When a CAM provider treats any health condition covered in an insurance plan, **the CAM provider is eligible for reimbursement**, so long as that provider is licensed by his or her state and can treat the condition within that provider’s scope of practice.

Example #1: Suzy Smart has a backache that needs treatment. Treatment of back pain is covered by her health insurance plan. She can choose an orthopedist, an osteopathic physician, a naturopathic physician, a chiropractor, an acupuncturist, or a massage therapist *so long as* the provider is licensed in their state and back treatment is within his/her scope of practice.

Q7. Some people think that the nondiscrimination provision will cause an increase in “services” and, therefore, an increase in cost. Is that correct?

A7. The use of the word “service” is often ambiguous in an insurance context. More importantly, the nondiscrimination provision is about giving patients choice in selection of a health care provider. In fact, full implementation of the nondiscrimination provision is likely to reduce, not increase, cost. Many studies demonstrate treatment and care by CAM providers is more cost-effective than conventional medical care. It should be noted that the nondiscrimination provision does not require the addition of “services,” although it is important to note that nothing in the law prohibits the addition of a service. An insurer does not have to include every CAM provider in its network; however, it must include enough CAM providers to serve the population. The technical term for this is “network adequacy.” A handful of states (or less) have an “every willing provider law,” which would apply to all qualified providers in the state with such a law.

Q8. Does that mean that every procedure a CAM provider does will be covered by an insurer?

A8. Although the nondiscrimination provision gives patient access to CAM providers, every procedure within the scope of a CAM provider’s license **might not** be covered.

Insurers have several ways to eliminate coverage of a procedure. For example, a procedure can be excluded because the insurers consider it not medically necessary, not clinically efficacious or “experimental.” Conversely, insurers should not be allowed to use these categories of exclusions to defeat the purpose of the nondiscrimination provision.

Q9. Will I be reimbursed at the same level as an MD?

A9. There is nothing in the ACA that sets physician or provider fees. The insurers set reimbursement fees subject to any state law. The following sentence in the nondiscrimination provision addresses the fee issue stating only that an insurer is not prohibited from establishing varying rates based on quality and performance:

“Nothing in this section shall be construed as preventing a group health plan, a health insurance issuer, or the Secretary from establishing varying reimbursement rates based on quality or performance measures.”

It is unlikely that the Department of Health and Human Services, the federal agency most responsible for implementing the ACA, will get involved in the reimbursement issues, notwithstanding the above language.

Q10. What if I practice in a state where CAM providers are not licensed?

A10. The nondiscrimination provision will not apply to CAM providers that are not licensed by the state in which they practice.

Q11. Will all CAM providers in my area be covered by the health plans?

A11. The nondiscrimination provision is not an “every willing provider” law. That type of law means that an insurer has to take every qualified provider into its network. The nondiscrimination provision addresses this:

“This section shall not require that a group health plan or health insurance issuer contract with any health care provider willing to abide by the terms and conditions for participation established by the plan or issuer.”

Q12. Who’s responsible for implementing the nondiscrimination provision on a state level?

A12. The implementation details will vary from state to state with the Department of Insurance in a state often taking the lead. IHPC hopes to assist state associations with understanding what agencies have oversight in the various states and what materials will be helpful throughout the implementation.

Q13. What negative results could occur during the implementation of the nondiscrimination provision?

A13. Several states have had experience with a state law that is similar to the nondiscrimination provision and sometimes insurers will try to cap the number of visits, lower reimbursement rates, remove the service altogether, or use other strategies to limit the implementation of non-discrimination policies. But it’s important to note that **making access to a CAM provider difficult violates the letter and spirit of the nondiscrimination provision.**

Further, as noted above, by limiting the number of CAM providers, insurers may be violating “network adequacy” laws on both the state and federal level. The first line of defense is to educate decision-makers about the nondiscrimination provision and make your state association’s voice heard.

Q14. How can IHPC assist my association in ensuring that the nondiscrimination provision is implemented properly?

A14. IHPC will be in communication with the national associations for the participating CAM professions to assist with implementation efforts around the country. IHPC plans to assemble an implementation kit for each of the states suggesting how to reach out to policymakers, insurers and other stakeholders in your state responsible for implementing the ACA as well as how to ensure a smooth and successful implementation.