



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 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."*

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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. Insurance companies will be required to give the same rights and coverage to all licensed healthcare providers, medical doctors and massage therapists alike. Full, broad 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 applies to both market-based healthcare plans and insurance plans bought on the "health insurance exchanges," meaning, any insurance plan in your state. This 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 includes 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 or certified 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 massage therapist treats any health condition covered in an insurance plan (e.g., back pain, neck pain, etc), **the massage therapist is eligible for reimbursement**, so long as that provider is licensed by his or her state and can treat the condition within his or her scope of practice.

Example: Suzy Smart has a backache that needs treatment. Treatment of back pain is covered by her health insurance plan. Suzy knows that therapeutic massage is good for back pain, so she looks up a massage therapist in her insurance network. As long as the therapist Suzy chooses is licensed in their state and is working within his or her scope of practice, the massages will be covered by insurance.

Q7. Will providers need to be in-network with an insurance plan in order to be reimbursed?

A7. Depends on the plan. Some insurance companies will reimburse out-of-network providers for covered services, albeit at a lower rate (patients will be responsible for a larger portion of the cost). Other insurance companies will only reimburse providers in their own network.

Q8. Will patients need a referral for massage therapy from a primary care provider (PCP) in order for the massage to be covered?

A8. Depends on the plan.

Q9. Some people think that the nondiscrimination provision will cause an increase in "services" and, therefore, an increase in cost. Is that correct?

A9. The use of the word "service" is often ambiguous in an insurance context. More importantly, the nondiscrimination provision is not about increasing services, but about **increasing the selection of covered health care providers**. For example, insurance policies have always covered treatment for back pain. The only difference now is that patients will have a greater choice as to what type of provider they can see for their back pain. Some may still choose to go exclusively to medical doctors, while others may prefer to seek out CAM alternatives. Insurance will cover any of these options.

As far as costs are concerned, 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.

Q10. Does that mean that every procedure a massage therapist does will be covered by an insurer?

A10. 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. If an insurer considers a procedure to be not medically necessary, not clinically efficacious, or "experimental", the procedure may be excluded from coverage. On the other hand, insurers should not be allowed to use these categories or exclusion in order to defeat the purpose of the nondiscrimination provision.

Q11. Will I be reimbursed at the same level as an MD?

A11. 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.

Q12. What if I practice in a state where massage therapists are not licensed?

A12. The nondiscrimination provision will not apply to massage therapists that are not licensed or certified by the state in which they practice, even if the state does not offer licensing or certification.

Q13. Will all massage therapists in my area be covered by the health plans?

A13. An insurer does not have to include every massage therapist in its network; however, it must include enough to serve the population. The technical term for this is "network adequacy."

Only a few states have an "every willing provider" law, which would mean that all qualified providers would be covered equally by insurers. Providers in other states will have to contract with an insurer in order to work within its network.

Q14. I don't take/don't want to take insurance. How will this law affect me?

A14. If you do not plan on taking insurance in your massage practice (or if you only take PIP insurance), this law will not affect you. Just as some providers will not want to deal with taking insurance, many patients will not want to bother with finding covered providers. The nondiscrimination provision does not change the way cash massages function, nor does it change PIP laws.

Q15. Who's responsible for implementing the nondiscrimination provision on a state level?

A15. The implementation details will vary from state to state, although the Department of Insurance within each state will often take the lead. IHPC hopes to assist state associations with understanding which agencies have oversight in the various states and what materials will be helpful throughout the implementation.

Q16. What negative results could occur during the implementation of the nondiscrimination provision?

A16. Several states have had experience with state laws similar to the nondiscrimination provision and

have found that insurers will sometimes 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.

Q17. How can IHPC assist my state association in ensuring that the nondiscrimination provision is implemented properly?

A17. IHPC will be in communication with national massage associations 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.