

The Applicability of Section 2706 to Insurance Coverage and Employee Benefit Plans

The ACA has received numerous questions as to the applicability of Section 2706 in many different scenarios. While it has not yet been determined specifically how this provision will be enforced in regard to certain specific payer policies and practices, ACA is steadfastly working to ensure that all the strength originally intended to be held by this provision remains, and that it will remain a bulwark of protection for doctors of chiropractic for years to come. This information sheet provides some helpful points to add clarity and to help providers and their staffs to become more familiar with Section 2706. For additional information, please go to www.acatoday.org/inclusion.

The Patient Protection and Affordable Care Act (PPACA), contains a non-discrimination provision, Section 2706, which is part of the Public Health Service Act, entitled, "NONDISCRIMINATION IN HEALTH CARE." This provision states:

"(a) PROVIDERS.—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." (Emphasis added)

The underlined terms above are given broad application through their statutory definition as follows:

(b) **Definitions relating to health insurance**

(1) **Health insurance coverage**

The term "health insurance coverage" means benefits consisting of medical care (provided directly, through insurance or reimbursement, or otherwise and including items and services paid for as medical care) under any hospital or medical service policy or certificate, hospital or medical service plan contract, or health maintenance organization contract offered by a health insurance issuer.

(2) **Health insurance issuer**

The term "health insurance issuer" means an insurance company, insurance service, or insurance organization (including a health maintenance organization, as defined in paragraph (3)) which is licensed to engage in the business of insurance in a State and which is subject to State law which regulates insurance (within the meaning of section 514(b)(2) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1144(b)(2)]). Such term does not include a group health plan.

It is also important to note that Section 2706 applies to all employee health benefit plans (insured and self-insured) and all health insurance policies (see below). By this definition, it does not include Medicare. It also does not apply to plans considered "grandfathered" as of January 1, 2014.

42 USC 300gg-91

(a) **Group health plan**

(1) **Definition**

The term "group health plan" means an employee welfare benefit plan (as defined in section 3(1) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1002(1)]) to the extent that the plan provides medical care (as defined in paragraph (2)) and including items and services paid for as medical care) to employees or their dependents (as defined under the terms of the plan) directly or through insurance, reimbursement, or otherwise.

(2) **Medical care**

The term "medical care" means amounts paid for—

(A) the diagnosis, cure, mitigation, treatment, or prevention of disease, or amounts paid for the purpose of affecting any structure or function of the body,

(B) amounts paid for transportation primarily for and essential to medical care referred to in subparagraph (A), and

(C) amounts paid for insurance covering medical care referred to in subparagraph (A).

How does Section 2706 apply?

Given the above, it is ACA's view that Section 2706 applies in the following situations, however this is not an all inclusive list:

- if there is evidence that doctors of chiropractic are being reimbursed at a different level than other providers for the same covered service and such discrimination is not based on quality or performance measures, but is based in whole or in part upon licensure,
- if there is evidence that an insurer or group health plan is, for example, applying caps on specific services provided by doctors of chiropractic, and such caps are not being applied to other providers based in whole or in part upon licensure,
- if there is evidence that the insurer or group health plan is denying specific forms of care otherwise covered under the plan on the basis that it is provided by a doctor of chiropractic., and the covered service is within the scope of practice of a doctor of chiropractic; and/or
- if there is evidence that doctors of chiropractic are being excluded as a group from participation in a network's plan.

Section 2706 applies to all group health plans, both insured and self insured, and, it is not subject to any notion of ERISA preemption. The law provides that the state has the first responsibility to enforce Section 2706, and if the state does not enforce, then it falls to the HHS Secretary to do so.

The state of Connecticut is an example of a state which has adopted legislation to enforce Section 2706 and the other market reforms passed under PPACA. It reads:

"Conn. Gen. State. Ann. §38a-591(b) (2011) Each insurance company, fraternal benefit society, hospital service corporation, medical service corporation and health care center licensed to do business in the state shall comply with sections 1251, 1252, and 1304 of the Affordable Care Act and the following Sections of the Public Health Service Act, as amended by the Affordable Care Act: (1) 2701 to 2709, inclusive, 42 USC 300gg et se; (2) 2711 to 2719A, inclusive, 42 USC 300gg-11 et seq.; and (3) 2794, 42USC 300gg-94."

While these examples and definitions illustrate the impact on the daily practice of chiropractic, specifically how Section 2706 will be enforced is yet to be fully seen. There are many facets of this issue we are working through as the ramifications of this important provision are considered by many groups. ACA had the vision to consider the practical ways the language could improve patient access to and payment for the services of a doctor of chiropractic when we worked to include the language into the law and we will continue our outreach to payers, regulators, and legislators and keep the profession informed. In the meantime, we encourage everyone to remind all stakeholders that Section 2706 prohibits discrimination in terms of coverage, payment and participation on the basis of provider type. For more information from ACA on this topic, go to www.acatoday.org/inclusion.