

**Congress of the United States**  
**Washington, DC 20515**

June 10, 2014

The Honorable Sylvia Mathews Burwell  
Secretary  
United States Department of Health and Human Services  
200 Independence Avenue, SW  
Washington, DC 20201

Dear Secretary Burwell:

Thank you for your ongoing leadership as you continue working to implement the Affordable Care Act (ACA) and improve the nation's health.

With the knowledge that health insurers, state regulators and others are increasingly relying on the Department of Health and Human Services (HHS) for help in interpreting the ACA, we write to you today with concerns regarding guidance published jointly by HHS, the Department of Labor, and the Department of Treasury (the Departments) on the topic of the Affordable Care Act's "Non-Discrimination in Health Care" provision, codified at Section 2706(a) of the Public Health Service Act (42 U.S.C. §300gg-5(a)).

Overall, Section 2706(a) is an important patient-centered health insurance reform aimed at empowering consumers with a greater ability to seek care from the provider of their choice and safeguarding patient access to covered health services from the full range of providers licensed and certified to provide such services by their respective states. To that end, Section 2706(a) states that "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."

Ahead of the provision's January 1, 2014 enforcement date, the Departments issued sub-regulatory guidance dealing specifically with Section 2706(a) which we believe to be misleading, inaccurate, and a threat to the very foundation of the provision. We respectfully ask that you work with your counterparts at the Department of Labor and Department of Treasury to correct this flawed FAQ in a way that more accurately reflects the language found in the law and the intent of Congress.

In the April 29, 2013 FAQ, the Departments assert that "reasonable medical management techniques" may supersede the broad protections under 2706(a). While a medical management technique that does not discriminate in coverage based on licensure or certification does remain allowable under the law, discrimination in coverage based on licensure or certification of the provider is forbidden even if such discrimination is wrapped in the flag of medical management. The ACA provides many new patient protections that prohibit improper practices by health plans or issuers even when those practices were labeled "medical management techniques" by those payers in the past. Even if the Departments did not intend to suggest that so-called medical management techniques that discriminate in coverage are somehow exempt from the law, the inclusion of such coverage criteria in the response confuses patients, providers, and payers.

Furthermore, the FAQ advises that section 2706 allows reimbursement rates to be determined based on “market standards and considerations.” On this point, once again the language of the Affordable Care Act is quite clear—the law allows plans to vary reimbursement rates based on quality and performance, but there is no provision in the law that allows for continuing discrimination based on market standards and considerations. Existing market non-discrimination standards and considerations were precisely the reason Congress enacted Section 2706(a). Allowing discrimination to continue based on the market standards and considerations would be to ignore Section 2706(a), which outlaws such discrimination.

Section 2706(a) was intended to prohibit discrimination by insurers against certain types of providers. The FAQ published on April 29, 2013 provides advice that is contrary to Congressional intent. This provision is an important patient safeguard aimed at ensuring access to needed care and an ability to seek care from the provider of their choice. We respectfully ask that you work with your counterparts at the Department of Labor and Department of Treasury to correct this FAQ in a way that more accurately reflects the language found in the law and the intent of Congress. Thank you for your prompt attention to this matter.

Sincerely,



KURT SCHRADER  
Member of Congress



BRUCE L. BRALEY  
Member of Congress



EARL BLUMENAUER  
Member of Congress



DORIS O. MATSUI  
Member of Congress



JANICE D. SCHAKOWSKY  
Member of Congress



DAVID LOEBSACK  
Member of Congress



COLLIN C. PETERSON  
Member of Congress



TERRI A. SEWELL  
Member of Congress



CAROL SHEA-PORTER  
Member of Congress



MICHAEL H. MICHAUD  
Member of Congress



PETER A. DeFAZIO  
Member of Congress



CHERI BUSTOS  
Member of Congress



JARED HUFFMAN  
Member of Congress



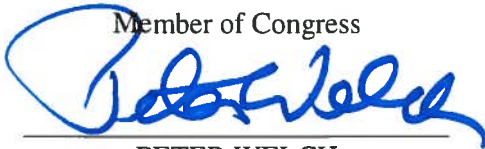
JULIA BROWNLEY  
Member of Congress



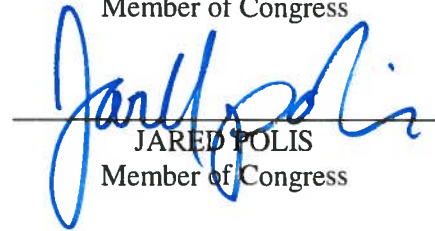
ELEANOR HOLMES NORTON  
Member of Congress



CHELLIE PINGREE  
Member of Congress



PETER WELCH  
Member of Congress



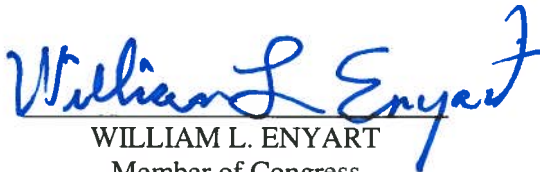
JARED POLIS  
Member of Congress



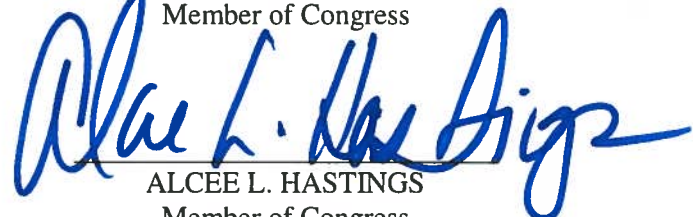
ZOE LOFGREN  
Member of Congress



THEODORE E. DEUTCH  
Member of Congress



WILLIAM L. ENYART  
Member of Congress



ALCEE L. HASTINGS  
Member of Congress



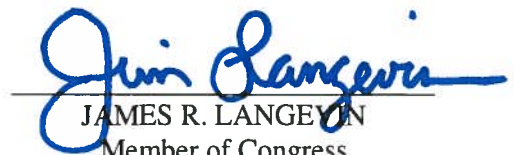
ED PERLMUTTER  
Member of Congress



LOUISE McINTOSH SLAUGHTER  
Member of Congress



SUZANNE BONAMICI  
Member of Congress



JAMES R. LANGEVIN  
Member of Congress



COLLEEN W. HANABUSA  
Member of Congress



CAROLYN McCARTHY  
Member of Congress



STEVE ISRAEL  
Member of Congress



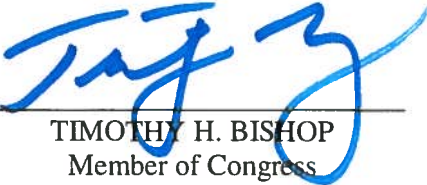
MICHAEL M. HONDA  
Member of Congress



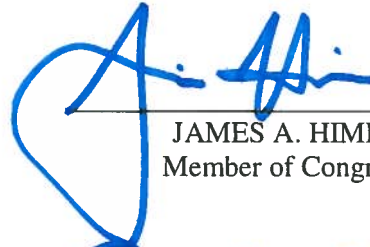
KATHY CASTOR  
Member of Congress




PETE P. GALLEGO  
Member of Congress



TIMOTHY H. BISHOP  
Member of Congress



JAMES A. HIMES  
Member of Congress



MATT CARTWRIGHT  
Member of Congress



DAVID N. CICILLINE  
Member of Congress



LINDA T. SÁNCHEZ  
Member of Congress

cc: The Honorable Jacob J. Lew, Secretary of the Treasury  
The Honorable Thomas E. Perez, Secretary of Labor