

CMS.gov

Centers for Medicare & Medicaid Services

The Center for Consumer Information & Insurance Oversight

April 29, 2013

Provider Non-Discrimination

PHS Act section 2706(a),³ as added by the Affordable Care Act, 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.” PHS Act section 2706(a) does 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,” and nothing in PHS Act section 2706(a) prevents “a group health plan, a health insurance issuer, or the Secretary from establishing varying reimbursement rates based on quality or performance measures.” Similar language is included in section 1852(b)(2) of the Social Security Act⁴ and implementing HHS regulations.⁵

Q2: Will the Departments be issuing regulations addressing PHS Act section 2706(a) prior to its effective date?

No. The statutory language of PHS Act section 2706(a) is self-implementing and the Departments do not expect to issue regulations in the near future. PHS Act section 2706(a) is applicable to non-grandfathered group health plans and health insurance issuers offering group or individual health insurance coverage for plan years (in the individual market, policy years) beginning on or after January 1, 2014.

Until any further guidance is issued, group health plans and health insurance issuers offering group or individual coverage are expected to implement the requirements of PHS Act section 2706(a) using a good faith, reasonable interpretation of the law. For this purpose, to the extent an item or service is a covered benefit under the plan or coverage, and consistent with reasonable medical management techniques specified under the plan with respect to the frequency, method, treatment or setting for an item or service, a plan or issuer shall not discriminate based on a provider’s license or certification, to the extent the provider is acting within the scope of the provider’s license or certification under applicable state law. **This provision does not require**

plans or issuers to accept all types of providers into a network. This provision also does not govern provider reimbursement rates, which may be subject to quality, performance, or market standards and considerations.