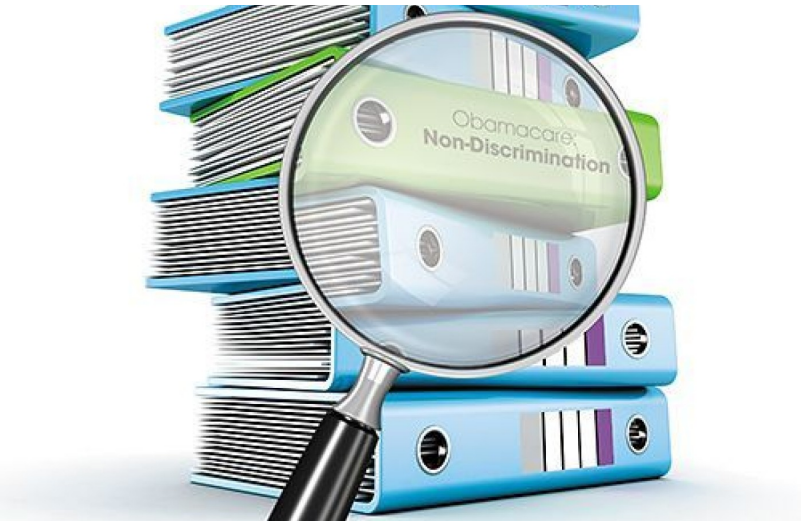
ACUPUNCTURE Today



POLITICS / GOVERNMENT / LEGISLATION

A Closer Look At The Affordable Care Act

HOW IT WILL AFFECT YOUR PRACTICE

Bill Reddy, LAc, Dipl. Ac.

The Patient Protection and Affordable Care Act (ACA) became law in March 2010 ushering in a slightly different world view than the "business as usual" healthcare model America was currently operating within. The salient points that affect AOM professionals and positively affect the American public include:

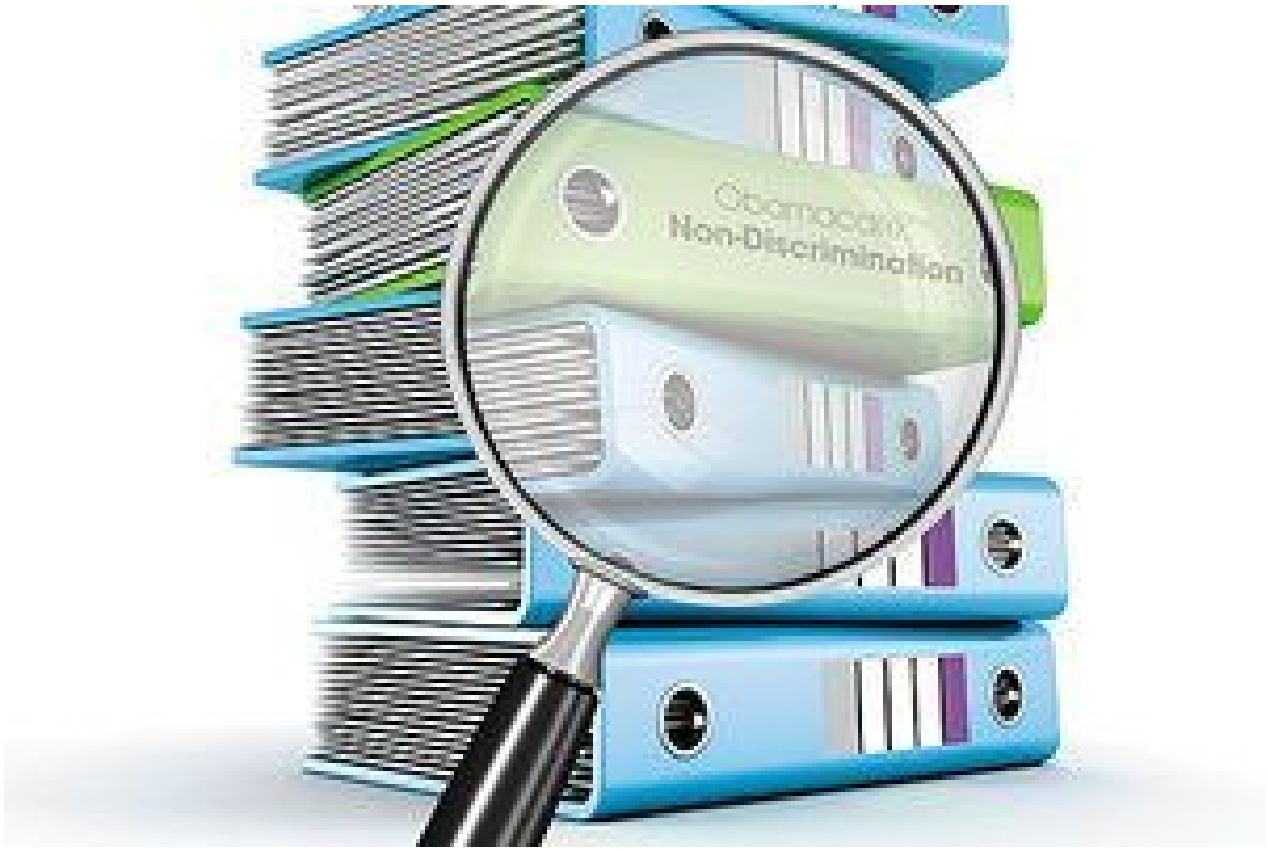
Section 5101: The definition of the healthcare workforce was originally defined as "MDs, DO's and Allied Health Professionals" and the Integrated Healthcare Policy Consortium, now known as the Integrative Healthcare Policy Consortium (IHPC), and other stakeholder groups worked through Senator Harkin (D- Iowa) to modify it to read "*All licensed healthcare professionals*," which allowed our profession to be officially part of America's future healthcare system.

The Patient-Centered Outcomes Research Institute (PCORI) was one of the 159 new agencies, offices and/or programs born out of the ACA. PCORI is focusing on evidence based research to assist people in making informed healthcare decisions, including Complementary and Alternative Medicine.

Section 2706: Non-Discrimination in healthcare. This key sentence in this section is "*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*."

Section 2706 will take effect on January 1st, 2014. However, nothing in 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*."[1] How does this translate into everyday English? It means that we, as a profession, may *still* be discriminated against in terms of how much we get reimbursed compared to our "reasonable and customary" service charges, but

will NOT get discriminated against based on the letters after our names (L.Ac., OMD, DOM, AP, etc.). Insurance companies are required to reimburse according to CPT code, not the practitioner performing the particular procedure. This provision also doesn't require plans or issuers to accept all types of providers into a network (another loophole for insurance companies to capitalize on).



In the *Huffington Post* article, entitled: *Non-Discrimination: A 'Big Honking Lawsuit' to Advance Integrative Medicine and Health?* published June 3rd, 2013 author John Weeks wrote, "*The law was hailed as a breakthrough for integrative treatment. Consumers could access licensed acupuncturists, massage therapists, naturopathic doctors, chiropractors and home-birth midwives. Medical specialists could more comfortably refer for complementary services knowing that doing so would not require patients to pay cash. A critical barrier keeping patients, doctors and systems from exploring optimal integration via inclusion and referrals would be history.*"

Unfortunately, just because this section is "law" doesn't mean individual states will enforce it. In a recent meeting in late March 2013 of the Advisory Group on Prevention, Health Promotion and Integrative and Public Health, section 2706 was discussed as one of the many issues regarding the implementation of the Affordable Care Act. Jeffery Levi, PhD, Chair of the National Prevention Council wrote a letter to Regina Benjamin, MD, MBA, Surgeon General of the United States, containing the following summary statement:

"*The Advisory Group endorses the appropriate use of the healthcare workforce as defined in Section 5101 of the ACA. Thus we request that HHS issue guidance to states regarding compliance with Section 2706 of the ACA and its relationship to all plans offered through the states' health insurance exchanges.*"

Furthermore, IHPC is developing a new website, which will have a toolbox for non-discrimination provision implementation information, which will be helpful for state and national provider associations. In the meantime, IHPC is uploading information about Section 2706 to the home page and news section of its website, www.ihpc.org. Currently, an excel spreadsheet of U.S. States has

been developed, listing points of contact (insurance commissioners, etc.) and other critical information to be used to ensure proper implementation of section 2706.

The US Department of Health and Human Services (HHS) recently released some Frequently Asked Questions (FAQ) related to the ACA, where one question specifically pertained to the non-discrimination provision:

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.

The departments will work together with employers, plans, issuers, states, providers, and other stakeholders to help them come into compliance with the provider nondiscrimination provision and will work with families and individuals to help them understand the law and benefit from it as intended.

The Partners for Health of the IHPC raised some concerns about the language above that may be subject to interpretation. The second to last sentence of the second paragraph states "*This provision does not require plans or issuers to accept all types of providers into a network*." This could pertain to non-licensed practitioners such as naturopathic physicians (currently licensed in 17 states). This sentence seems a bit contradictory to the "non-discrimination" aspect of the directive when it's basically stating that plans or issuers are not required to accept "all types" of providers. Another concern had to do with the term "network." Does this mean that insurance companies can make entire categories of providers eligible only for an "out-of-network capacity?" That surely is discriminatory. The final sentence in the guidance reads as follows: "*This provision also does not govern provider reimbursement rates, which may be subject to quality, performance, or market standards and considerations*." Here is what the providers fear: 2706 doesn't say anything about market standards. HHS' language could create a loophole. It invites insurers to cut reimbursement rates for certain categories of providers who are delivering the same services as other provider types.

Deborah Senn, JD (former insurance commissioner for Washington State) voiced the collective IPHC issues in a letter to Susan Johnson, Director of HHS Region X, stating "*We are concerned that issuing guidance that is not crystal clear and may contradict the law simply invites insurers and state regulators to interpret 2706 in a way that undermines the clear intent of the law*."

Ms. Senn also wrote a document summarizing Frequently Asked Questions (FAQ) for IHPC to inform their Partners for Health about section 2706. This FAQ addresses the top 14 questions practitioners may ask about the impact of 2706 on their practices, and is considered a "living document" and will be updated as new information emerges from HHS. It can be found on the American Association of Acupuncture and Oriental Medicine website (www.AAAOMonline.org) under Public Policy and on the home page of the IHPC website (www.IHPC.org).

FAQs

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 state 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.

Elaine Wolf Komarow, LAc, MAc, Past President of ASVA and former Director of the AAAOM, writes at theacupunctureobserver.com that we should all stay aware and involved in the future of U.S. healthcare by going to www.IHPC.org and clicking on the Action tab on the horizontal menu to sign up for action alerts (which occur a few times per year) by choosing Take Action E-list.

References:

1. US Department of Labor "FAQs about the Affordable Care Act implementation Part XV" (www.dol.gov/ebsa/faqs/faq-aca15.html)