

Health Insights Today

A SERVICE OF CLEVELAND CHIROPRACTIC COLLEGE

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EDITOR'S LOG

Medical Pushback on Nondiscrimination Law

By Daniel Redwood, DC

Among the important changes in the recently passed health reform law is Section 2706, which makes it illegal for insurance companies to discriminate against providers acting within the scope of their state licenses. Predictably, medical physicians who have benefited from many decades of discrimination now seek to turn back the clock and reinstate the pro-discrimination policies that have served them so well for so long.

Meeting in Chicago in mid-June, the House of Delegates of the American Medical Association (AMA) passed a resolution sponsored by the American Academy of Ophthalmology and the American Society of Anesthesiologists. This new AMA policy directs the organization to use its considerable firepower to overturn the provider nondiscrimination clause, citing its “troubling language” that upsets the “dynamic balance” under which insurers were free to discriminate against a long list of non-MD providers, including optometrists, chiropractors, podiatrists, nurse anesthetists, nurse midwives, psychologists, clinical social workers, acupuncturists, and other groups of licensed health practitioners.

If you have been wondering whether the nondiscrimination language in the health reform law packs real power, wonder no more. Just look at the seriousness with which the AMA is approaching it.

Toward a Level Playing Field

While the AMA and its specialty groups frame their pro-discrimination campaign in terms of protecting public health, saving taxpayer and patient dollars, helping the public avoid “massive confusion,” and supporting the highest possible standards of health care quality, the underlying motivation is transparently self-serving. Why, for example, are the ophthalmologists and anesthesiologists leading the charge? As noted by John Weeks on *The Integrator Blog*, ophthalmologists fear that a level playing field will weaken their competitive position vis-à-vis optometrists, while anesthesiologists have similar concerns about nurse anesthetists.

Let's pause for a fact-check. The Patient Protection and Affordable Care Act of 2010 in no way expands the scope of practice for optometrists, nurse anesthetists, chiropractors, or any other non-MD profession. Optometrists will not be performing eye surgeries; nurse anesthetists will not suddenly be permitted to determine the dosage of prescription medications. Chiropractors and acupuncturists will not be prescribing pain medications or performing back, neck or brain surgeries. Nor will clinical social workers be prescribing antidepressants.

But for those diagnostic and therapeutic procedures permitted these practitioners by state licensure laws, insurers will no longer be allowed to discriminate in favor of medical doctors simply because they are medical doctors. For example, the law specifically allows insurers to reimburse practitioners at higher rates when higher quality and performance have been demonstrated. But if the law is properly enforced, simply having the letters “M.D.” after one's name will no longer qualify as a demonstration of high quality care.

This is the heart of the matter. This is the level playing field that the medical profession (along with pharmaceutical and device manufacturers) urgently wishes to avoid. Comparative effectiveness research, along with rigorous evaluation of quality healthcare delivery, can make a major long-term difference. Both are significantly expanded by the health reform law. Chiropractors should welcome, not fear, fairly applied evaluations of quality and effectiveness.

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An Opening for Chiropractic

Chiropractors have historically been among the groups discriminated against by private insurance companies and federal health plans. In the past (and in some cases, the present), this has often taken the form of spinal manipulation being covered only when performed by a medical or osteopathic physician. More frequently in recent years, annual caps have been applied to chiropractic care but not to the same services when delivered by practitioners such as medical doctors and physical therapists. Today, perhaps the most insidious form of discrimination is tiered reimbursement, in which spinal manipulation delivered by chiropractors is reimbursed at rates significantly lower than the same service performed by other practitioners, who in many cases are far less qualified to deliver it. This also applies in varying degrees to other services provided by chiropractors. Such unjust discrimination must end, and the nondiscrimination policy that is now the law of the land has the potential to end it.

Specific Nondiscrimination Language

This new policy, championed by Senator Tom Harkin (D-IA), chair of the Senate Health, Education Labor and Pensions Committee, states the following:

“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.”

Moving Forward

All laws passed by Congress are specific in some ways and general in others. In cases where implementation requires more specifics than can be found in the precise language of the law, the executive branch of the federal government creates rules to clarify the meaning of the law for affected individuals, groups, and businesses. Section 2706 has now entered this rulemaking, or regulatory, phase of the process. Sometime not too far in the future (months, or possibly years), the Department of Health and Human Services (HHS) will publish rules detailing exactly how the provider nondiscrimination section is to be applied.

While the new AMA resolution calls on Congress to repeal the nondiscrimination section of the health reform law, the chances of that happening are slim to none. The AMA knows this. Their true goal is to pressure HHS to promulgate a set of rules that will limit the reach of the nondiscrimination law and make its enforcement as difficult as possible, thus preserving their privileged position to the maximum feasible extent. There are countless ways to accomplish this, which include using the word “may” instead of “shall,” creating extremely long timelines for implementation, and appointing regulators who do not believe in the regulations they are supposed to enforce. Old Washington hands are skilled in these arts.

PARCA

Fortunately, the AMA is not the only player on the field. Nor do chiropractors stand alone in seeking to have the law applied in the manner Congress intended. Since the early 1990s, the Patient Access to Responsible Care Alliance

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(PARCA)—initiated by the American Chiropractic Association and now including a wide range of non-MD/DO professions*—has played a key role in health legislation and its implementation. In its own words, PARCA “provides federal policymakers with access to information from all areas of the healthcare community, in order to assist in the formulation of responsible, well-rounded healthcare policy. The coalition is committed to quality, cost-effective care, and ensuring patients have options in the delivery of such care.”

PARCA, along with chiropractic organizations such as the ACA and ICA, is working tirelessly to ensure that the nondiscrimination law accomplishes its goals of fairness and equal treatment, which will benefit not only the involved professions but their many tens of millions of patients.

** The PARCA coalition includes the American Academy of Audiology, American Academy of Nurse Practitioners, American Association of Nurse Anesthetists, American Chiropractic Association, American College of Nurse Midwives, American Occupational Therapy Association, American Optometric Association, American Physical Therapy Association, American Podiatric Medical Association, American Psychological Association, American Speech-Language-Hearing Association, and National Association of Social Workers.*

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