

Does the ACA Prohibit a Group Health Plan From Excluding Certain Types of Providers?

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QUESTION: Does the ACA rule prohibiting discrimination with respect to health care providers prohibit a group health plan from excluding certain types of providers?

ANSWER: The Affordable Care Act (ACA) prohibits group health plans and insurers from discriminating with respect to plan participation or coverage against any health care provider acting within the scope of that provider's license or certification under applicable state law. However, the statute does not require group health plans and insurers to contract with any provider willing to abide by the terms and conditions for participation established by the plan or insurer, and it does not prevent them from establishing varying rates of reimbursement based on quality or performance measures. The ACA provision became effective for plan years beginning on or after January 1, 2014, but agency FAQs issued in April 2013 indicated that regulations would not be issued before the effective date and that until further guidance was issued, plans and insurers were expected to follow a good faith, reasonable interpretation of the law.

For this purpose, the 2013 FAQs stated that, to the extent an item or service is a covered benefit and consistent with the plan's reasonable medical management techniques with respect to the frequency, method, treatment, or setting for an item or service, the plan or insurer could not discriminate based on a provider's license or certification to the extent the provider was acting within the scope of the provider's license or certification under applicable state law. But the FAQs also advised that the ACA did not require plans or insurers to accept all types of providers into a network and did not govern provider reimbursement rates, which may be subject to quality, performance, or market standards and considerations.

In 2014, a Senate Committee raised concerns about the guidance in the 2013 FAQs. Claiming that it advised insurers that the ACA allowed them to exclude from participation whole categories of providers operating under a state license or certification, the Committee directed the agencies to correct the FAQs. In response, the agencies issued further FAQ guidance in May 2015, which superseded the earlier guidance and simply announced that the agencies will not take enforcement action against a plan or insurer under the provider nondiscrimination rule provided the plan or insurer is using a reasonable, good faith interpretation of the statutory provision.

While group health plans may have been able to look to the 2013 FAQs to justify covering only certain types of providers, the 2015 FAQs did not include this language and made clear that the 2013 FAQs no longer apply. Thus, any plan exclusion that is seen as a limit on a certain type of provider should be carefully reviewed with legal counsel for compliance with the ACA's provider nondiscrimination provision.

For more information, see EBIA's Health Care Reform manual at Section XIII.D ("Nondiscrimination in Health Care Providers").

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