



June 1, 2014

Centers for Medicare & Medicaid Services
Department of Health and Human Services
Attn: CMS-9942-NC
P.O. Box 8016
Baltimore, MD 21244-8016

Dear Sir/Madam:

The American Association of Oral and Maxillofacial Surgeons (AAOMS), which represents more than 9,000 oral and maxillofacial surgeons across the United States, is pleased to have the opportunity to submit comments in response to the Request for Information, published in the March 12, 2014 *Federal Register*, pertaining to provider non-discrimination.

Our comments are focused on a April 29, 2013 Frequently Asked Questions (FAQ) document issued by the Department of Health and Human Services, the Department of Labor and the Department of Treasury which provides interpretative guidance on Section 2706(a) of the Public Health Service Act, as added by the Affordable Care Act, that prohibits discrimination based on a provider's degree.

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." The statute's intent was to prohibit insurers from discriminating against a provider's participation in or reimbursement under the plan when a patient seeks treatment for a covered procedure from the provider if he/she is acting within his/her scope of practice and within state law.

Discrimination based on a provider's degree has particular relevancy for oral and maxillofacial surgeons (OMSs) as our members straddle both medicine and dentistry. OMSs are the only dental specialists recognized by the American Dental Association that are surgically trained in a hospital-based residency program for a minimum of four years. OMSs have knowledge and expertise that uniquely qualifies them to diagnose and treat a number of functional and esthetic medical and dental conditions in this anatomical area. Despite our education and training and the fact that state dental practice acts allow our members to treat such conditions, insurance companies still discriminate against our members by reimbursing them at a lower rate for the same procedure simply because they have a DDS – rather than an MD.

The AAOMS shares the concerns of the U.S. Senate Appropriations Committee, expressed in a July 11, 2013 committee report, that the FAQ does not reflect the statute's true intent and could allow

insurers to engage in discriminatory practices based solely on a provider's license – even if that provider is practicing within his or her scope of practice and within state law.

Our concerns with the FAQ are two-fold.

- 1) The FAQ states that Section 2706(a) “does not require plans or issuers to accept all types of providers into a network.” While Section 2706(a) states that a group health plan or insurance issuer is not required to contract with any health care provider willing to abide by the terms and conditions for participation, the statute's intent was to prevent insurance companies from having to open its networks to every provider willing to comply with its terms and conditions. The statutory language was not intended, however, to allow insurers to exclude participation by and reimbursement to entire categories of providers, such as OMSs, thereby preventing their enrollees from obtaining services from these types of providers. We are concerned that insurers might interpret this FAQ language as allowing them to do just that and prevent entire categories of providers acting within their scope of practice and within state law from providing services to their patients solely because of their degree.
- 2) The FAQ states that Section 2706(a) “does not govern provider reimbursement rates, which may be subject to quality, performance, or market standards and considerations.” However, the statutory language in Section 2706(a) states, “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.” As the Senate Appropriations Committee report notes, the intent of this provision was to allow insurers only to vary reimbursement based on a provider's quality or performance measures. Furthermore, the FAQ provides no definition for “market standards and conditions” which could provide wide latitude for insurers to continue their discriminatory practices – precisely the reason why statutory language in Section 2706(a) was needed in the first place.

The AAOMS respectfully urges the Departments of Treasury, Labor and Health and Human Services to revise the FAQ with respect to the above two issues of concern to more actually reflect the intent of Section 2706(a). Such action will better expand patient access to the full spectrum of providers qualified by education, training and state law to treat their condition.

If you have any questions, please contact Ms. Patty Serpico at the American Association of Oral and Maxillofacial Surgeons. Patty can be reached at 847-233-4394 or pserpico@aaoms.org.

Sincerely,



Eric T. Geist, DDS
President