

## PROVIDER NONDISCRIMINATION

## FAQ

**Q: Why is Provider Nondiscrimination important for hospital administrators?**

Hospitals and hospital administrators have a vested interest in this issue, especially when hospitals have a current subsidy or bill on behalf of providers, such as Certified Registered Nurse Anesthetists (CRNAs). In these cases, hospitals want to optimize reimbursement from health plans and insurers for practitioners and the services that they furnish. When health plans and insurers exclude practitioners in their networks based on licensure or when they pay CRNAs less than the fee schedule amount for their services, hospitals are left paying the difference for the insurance companies in higher anesthesia subsidies and stipends.

**Q: What is the Provider Nondiscrimination law?**

In 2010, Congress enacted into law a Provider Nondiscrimination provision that prohibits private health plans and health insurers from discriminating against qualified licensed healthcare professionals, such as CRNAs, solely based on their licensure. This bipartisan law became effective January 1, 2014, but the agencies overseeing it never promulgated rules on it. In December 2020, the Consolidated Appropriations Act of 2021 was signed into law that includes language on provider nondiscrimination, giving the three departments (The Departments of Health and Human Services, Labor and Treasury) one year to promulgate rules on Provider Nondiscrimination.

**Q: What is the language of the Provider Nondiscrimination Provision?**

It states: "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 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."

**Q: Is Provider Nondiscrimination important to CRNA practice?**

Yes. Proper implementation of the Provider Nondiscrimination provision is crucial because health plans have the latitude to determine the quantity, type, and geographic location of healthcare professionals they need to ensure the availability of healthcare benefits to their enrollees. However, when health plans organize their healthcare delivery in such a way that

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they discriminate against whole classes of qualified licensed healthcare professionals by licensure. For example, by prohibiting reimbursement for anesthesia and pain management services provided by CRNAs, patient access to care is impaired, consumer choice suffers, and healthcare costs climb for lack of competition. Additionally, such discrimination provides incentives for the use of higher-cost providers without improving quality or access to care. Promoting nondiscrimination encourages the use of qualified, licensed healthcare professionals such as CRNAs who perform the same services to the same high level of quality as other qualified providers.

**Q: What are some of the current discriminatory reimbursement policies against providers, such as CRNAs?**

Current discriminatory policies include:

- Not reimbursing CRNAs the same amount as physicians for performing the same anesthesia services despite no measurable change in performance or quality.
- Refusing to contract with CRNAs, many times giving CRNA licensure as the reason for not engaging in a contract.
- Placing additional requirements on CRNAs beyond what is required by state licensing requirements in order to participate in the health plan or health insurer's network.

**Q: What is AANA's position on the meaning of the Provider Nondiscrimination Provision?**

The AANA interprets Section 2706 to protect patient choice and access to a range of beneficial providers and prevent discrimination by private health plans and health insurers against an entire class of health professionals, such as CRNAs. Health plans and insurers cannot refuse to contract with CRNAs just based on their licensure alone. We believe it is discrimination if health plans or health insurers have a policy that reimburses differently for the same services provided by different provider types solely on account of their licensure. While health plans might believe this is a cost-effective way to save money and lower health care costs, this would divert cases to more expensive providers, such as anesthesiologists, leading to impaired access and increased costs. The AANA also interprets the provider nondiscrimination provision to mean that if a health plan or health insurer network offers a specific covered service, they should include in their network all types of providers who can offer that service. For example, a health plan offers coverage for anesthesia services, should allow all anesthesia providers who offer those services to be able to participate in their networks.

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**REFERENCES**

1. P.L. 111-148, Sec. 1201, creating a new Sec. 2706 in the Public Health Service Act, "Non-Discrimination in Health Care."