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PSYCHOLOGICAL
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PRACTICE ORGANIZATION

June 9, 2014

Centers for Medicare and Medicaid Services
Department of Health and Human Services

Employee Benefits Security Administration
Department of Labor

Internal Revenue Service
Department of the Treasury

Re: Request for Information Regarding Provider Non-Discrimination [CMS-9942-NC]

To the Departments:

The American Psychological Association Practice Organization (APAPO) is providing comments in response to the request for information on the provider non-discrimination provision in section 2706(a) of the Public Health Service Act (PHS Act). APAPO is an affiliate of the American Psychological Association, the professional organization representing more than 130,000 members and affiliates engaged in the practice, research, and teaching of psychology.

The Departments have asked for comments on all aspects of the interpretation of section 2706(a), which states that group health plans and health insurance issuers shall not discriminate against any health care provider, acting within the scope of the provider's license of certification under state law, from participation under the plan or insurance coverage. At issue is the Frequently Asked Question (FAQ) released by the Departments on April 29, 2013, stating that section 2706(a) does not require plans or issuers to accept all types of providers into a network and also does not govern provider reimbursement rates, which may be subject to quality, performance, or market standards and considerations.

APAPO believes the Departments erred in the FAQ interpretation of section 2706(a). As noted by the Senate Committee on Appropriations in its July 11, 2013 report (Committee Report), the FAQ indicates section 2706(a) allows the very discrimination that the law was intended to prohibit. We support the Committee Report's position that the law

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permits only a limited exception from the prohibition against discrimination in reimbursement rates for performance and quality measures, not broad exceptions for market standards and considerations such as medical management techniques. Section 2706(a) also was not meant to allow plans and issuers to exclude entire categories of providers from participation and coverage.

APAPO calls on the Departments to immediately revoke and revise this incorrect interpretation of section 2706(a). So long as the FAQ guidance is in circulation, plans and issuers will be under the mistaken belief that they can use discriminatory methods when determining reimbursement and coverage for healthcare services. Patients will suffer if faced with an inadequate number of diversely-skilled healthcare professionals from whom they can obtain treatment. Whether discriminatory practices are direct (e.g., not allowing certain providers to participate) or indirect (e.g., paying certain providers less than others for comparable services) they ultimately harm both patients and providers. Section 2706(a) was created to prevent such discrimination and allow patients to make their own choices among qualified licensed healthcare providers. To ensure patient access to needed healthcare services we are calling upon the Departments to revise the FAQ so that it clearly states that discrimination among providers is prohibited and more carefully delineates the limited exception in reimbursement rates pertaining to quality and performance measures.

If you have any questions please contact Diane M. Pedulla, J.D., Director of Regulatory Affairs, by telephone (202-336-5889) or email (dpedulla@apa.org).

Sincerely,

A handwritten signature in black ink, appearing to read "DB Walter". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Douglas B. Walter, J.D.
Assistant Executive Director, Government Relations