

## 2706 Non-Discrimination provision survey – Results and Implications

By Bill Reddy, L.Ac., Dipl.Ac.

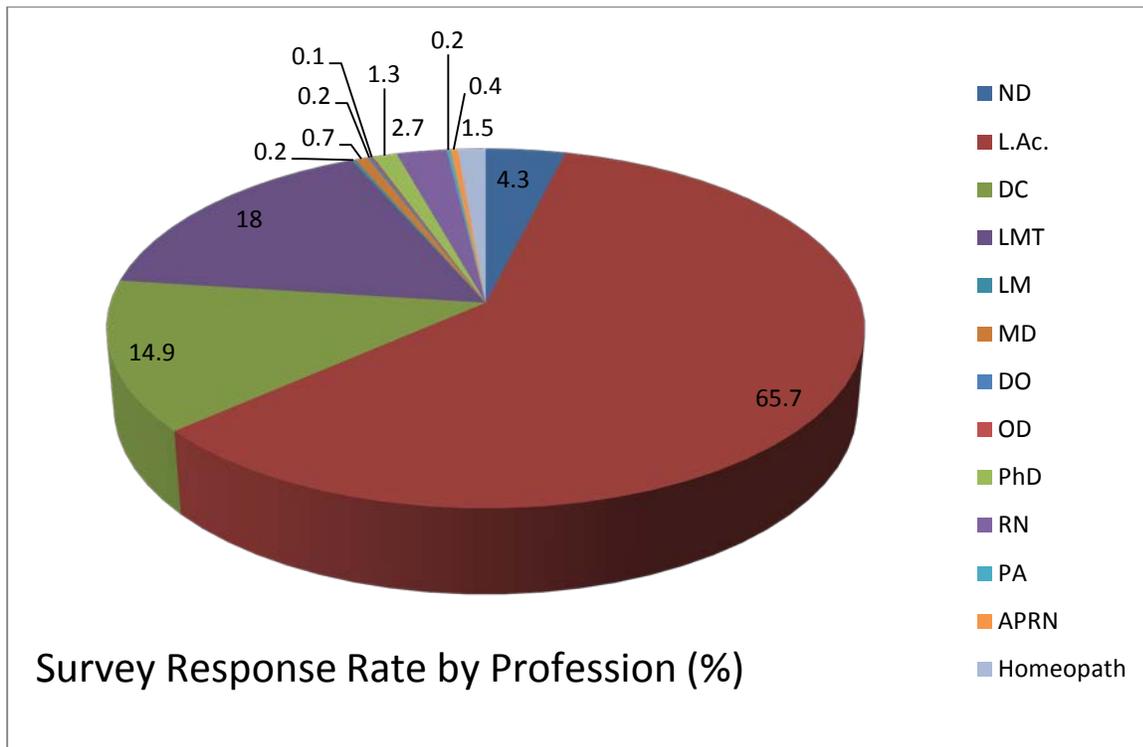
Director, [Integrative Healthcare Policy Consortium \(IHPC\)](#)

In late April 2014, NCCAOM Diplomates received an email survey (Subj line: “End Discrimination against Acupuncturists”) polling CAM practitioners for a [Request for Information](#) (RFI) from the Department of Health and Human Services (HHS), released in mid-March. The RFI was in conjunction with the proper implementation of Section 2706, provider non-discrimination. The Integrative Healthcare Policy Consortium (IHPC), a national non-profit coalition comprised of 13 organizations and institutions representing over 400,000 Complementary and Alternative Medicine (CAM) practitioners across the nation, headed up the effort to collect this information from Acupuncturists, Naturopaths, Homeopaths, Certified Professional Midwives, Chiropractors, Holistic Nurses, Physicians, Osteopaths, Optometrists, and Massage Therapists.

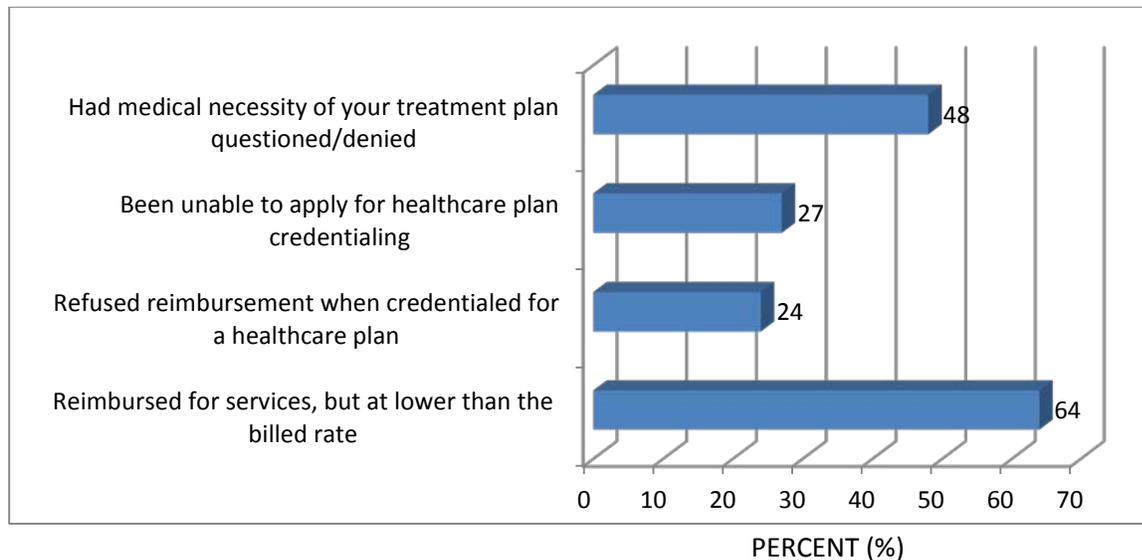
For a more detailed discussion of Provision 2706, read the Acupuncture Today article, “[A Closer Look at the Affordable Care Act: How it will Affect Your Practice.](#)”

<http://www.acupuncturetoday.com/mpacms/at/article.php?id=32794>

The survey returns numbered more than 5,300 responses, representing practitioners in 50 states and three territories; 65% of which were Licensed Acupuncturists. The breakdown of professions is as follows:



## Have you experienced any of the following issues for services you provided on or after January 1, 2014?



### Discussion:

The IHPC and their Partners for Health organizations collaborated on a response [letter](#) to the HHS RFI. The letter covered the following key points:

1. Background on the intended interpretation of Section 2706(a), Title XXVII of the Public Service Act and examples of misinterpretation and confused guidance
2. Examples of variable implementation
3. Examples of non-discrimination in healthcare preceding Section 2706(a)
4. Results of an IHPC survey characterizing the present landscape
5. Key recommendations for DHHS to consider
6. Appendices: statements from IHPC Partners for Health representing licensed healthcare practitioners impacted by discrimination

Attachments to the letter contained a transcript of Senator Harkin's address to the American Association of Naturopathic Physicians in Washington, DC, a copy of John Blum's article entitled "[Non-Discrimination and the Role of Complementary and Alternative Medicine](#)," and a "Dear Colleague letter" penned by representative Kurt Schrader (OR). The Schrader letter states that the sub-regulatory guidance on section 2706 in the form of a "[FAQ](#)" is: "***misleading, inaccurate, and a threat to the very foundation of the provision. In that guidance, the Departments interpret the law in a way that would lead many health plans to believe that they may continue to perpetrate the very type of discriminatory practices which section 2706 aims to stop, such as employing 'medical management***

***techniques’ or ‘market standards and considerations’ to discriminate against certain types of providers and the patients that seek their care”.***

A recent report filed by the U.S. Senate Appropriations Committee stated the following in regard to the misleading FAQ previously presented: *“The fiscal year 2014 omnibus directed HHS to correct the 2013 FAQ on Section 2706 of the ACA to reflect the law and congressional intent. The Committee notes that CMS has not complied with this directive. The Committee expects the corrected FAQ by November 3, 2014, or an explanation for ignoring congressional intent.”*

Based on the survey responses, it is clear that the implementation of 2706 is spotty at best. Less than 30% of the respondents had success with patient reimbursement with superbills, 48% had their charges questioned or denied based on medical necessity, and 64% were reimbursed for their services, but below the billed rate. On the bright side, practitioners reported a 32% reduction in reimbursement denials after January 1 of this year compared to 2013, which is encouraging. The survey illustrates that CAM practitioners are **willing** to consider being preferred providers (51%), but almost 60% are not credentialed as HMO or PPO providers, with one third stating they operate a cash practice. Sixty seven percent of those surveyed coordinate their patient care (i.e. refer to) local MDs and DOs. In the United Kingdom, MDs refer to CAM professionals 83% of the time and in Germany, 70% of the time according to Paolo Roberti di Sarsina, MD, in his article entitled “The Social Demand for a Medicine Focused on the Person: The Contribution of CAM to Healthcare and Healthgenesis” (2007).

The final request of the [IHPC letter to HHS](#) was distilled into five points.

We respectfully request that the following be considered:

1. Revoke the FAQ issued April 29, 2013 and issue new, unambiguous guidance, as soon as possible so that Section 2706 is understood to **prohibit plans from covering a given service when offered by one type of licensed provider while denying coverage when the same service is provided by another type of licensed provider**. Model statutory language exists in Washington and Vermont – states with longstanding laws with the same intended outcome.
2. Include in the guidance that commercial insurers must allow all types of licensed providers to participate in their network and clearly define terms (such as network adequacy).
3. Identify DHHS liaisons to serve as representatives/ombudsmen to the states in an effort to provide greater guidance to the state insurance commissioners for uniform implementation.
4. Ensure that each state publicly display on their respective websites, the appropriate department and representative to serve as contact for consumers and practitioners related to 2706.
5. Encourage legislation to add similar language to the Medicare statutes to ensure consistent non-discrimination and equal access to the full range of health-oriented, person-centered, regulated healthcare professionals

The IHPC has yet to receive feedback from HHS representatives on the RFI response letter submitted on June 5, 2014. The IHPC Section 2706 Committee will continue to move forward, educating HHS regional directors on the necessity to enforce the non-discrimination provision in their respective regions, and opening lines of communication to state insurance commissioners.

An update: On July 24<sup>th</sup>, the U.S. Senate Appropriations Committee filed a report to accompany the Fiscal Year 2015 funding bill for the U.S. Department of Health and Human Services, which includes the Centers for Medicare and Medicaid Services. Page 140 of the report states: “*Provider Nondiscrimination*.—The fiscal year 2014 omnibus directed HHS to correct the 2013 FAQ on Section 2706 of the ACA to reflect the law and congressional intent. The Committee notes that CMS has not complied with this directive. The Committee expects the corrected FAQ by November 3, 2014, or an explanation for ignoring congressional intent.”

In approximately three months, Health and Human Services (HHS) must provide an answer surrounding direction around the originally flawed FAQ. Meanwhile, the IHPC is working with HHS Regional Directors to ensure this deadline is a priority.