

# Provider Scope of License

## Provider Non-Discrimination Provision

### Overview


On May 26, 2015, the U.S. Departments of Labor, Health and Human Services (HHS), and the Treasury jointly prepared and published [“FAQs About Affordable Care Act Implementation \(Part XXVII\)”](#) (“FAQ XXVII”). FAQ XXVII supersedes [“FAQs About Affordable Care Act Implementation \(Part XV\)”](#) issued on April 29, 2013. Included in FAQ XXVII is some guidance regarding implementation of the Affordable Care Act’s Provider Non-Discrimination Provision, or PNDP, effective Jan. 1, 2014. Below is a summary of this guidance followed by some applicability benchmarks developed by UnitedHealthcare.

### FAQ XXVII: Provider Non-Discrimination

- ▶ Group health plans and health insurance issuers 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.
- ▶ Does not require that group health plans or health insurance issuers contract with any health care provider willing to abide by their terms and conditions for participation.
- ▶ Does not prevent group health plans or health insurance issuers from establishing varying reimbursement rates based on quality or performance measures.
- ▶ Similar language is included in section 1852(b)(2) of the Social Security Act and implementing HHS regulations (Medicare Advantage plans).

### Applicability

- ▶ PNDP applies to all non-grandfathered group health plans and health insurance issuers offering group or individual health insurance coverage for plan years (in the individual market, policy years) beginning on or after Jan. 1, 2014. This includes both fully insured as well as self-funded plans.

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- ▶ The requirements of the PNDP only apply to private health insurance and not Medicare or Medicaid program plans.
    - The Social Security Act, which applies to Medicare Advantage Plans, already has a provider non-discrimination provision which states that plans “shall not discriminate against providers with respect to participation, reimbursement, or indemnification for any provider acting within the scope of that provider’s license or certification under applicable State law solely on the basis of provider’s license or certification.”
  - ▶ The PNDP only applies to provider types that are persons licensed or certified by state law. It does not apply to institutions or facilities that may be licensed or certified to operate or conduct business. Only practitioners, i.e., persons, have a scope of practice.
  - ▶ For purposes of this provision, “participation” does not require contracting with any willing provider nor does it require the inclusion of all provider license/certification types in a network. **This provision does not require plans or issuers to accept all types of providers into a network.**

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