E X E C U T I V E O F F I C E O F T H E P R E S I D E N T

25-Nov-1994 11:18am

TO: Carol H. Rasco

FROM: Christopher C. Jennings
Domestic Policy Council

CC: Jennifer L. Klein

SUBJECT: RE: Freedom of choice

Carol:

Most people do not view there to be any difference between the terms: "any willing provider" laws and "freedom of choice" laws. Freedom of choice terminology is used interchangeably by providers who think it is a more powerful phrase than any "willing provider."

Technically, however, you could make the following destinction:

Usually, freedom of choice laws are applied to how states regulate fee for service plans. The states, through their licensure boards and other oversight bodies, generally limit which providers are eligible for reimbursement through training and licensure requirments. So, e.g., a chiropractor would not be reimbursed for the same service provided by an M.D. Freedom of choice laws generally are used to open up benefit packages to all providers who provide the same service. (However, as you saw yesterday, the term of art is now used by everyone -- even pharmacists -- who aren't concerned about competition of people providing the same service, rather they are concerned about selective contracting with particular pharmacists.)

Generally, any willing provider laws are applied to help remove closed panel restrictions used predominantly by HMOs. In this case, providers -- like retail pharmacists -- get upset by the selective contracting HMOs employ to achieve discounts. Any willing provider laws essentially say that any provider who is willing to play by the reimbursement rules layed out by the HMO cannot be excluded from participating.

BOTTOM LINE: I would not worry about destinctions. Relative to your question about freedom of choice in HSA: We in fact overrode state's authority to pass freedom of choice laws for HMOs and PPOs. But to balance this out, we required a fee for service plan in every service area -- so that all providers would have access to at least one plan. This fact, along with our equal access

provision (which allowed group phamacy purchasers to get access to the same type of discounts that HMOs and hospitals now have), made our bill acceptable to the retail pharmacy profession. It also assured that, for the most part, we were still able to retain the support of the HMO industry (at least as it related to this issue).

Lastly, to answer your question how did we answer the freedom of choice question: We usually said we expanded choice of plans to every American. Since consumers would be choosing plans (rather than employers choosing for their employees) consumers would now be in the true driving seat and plans were more likely to be responsive to consumer desires. As a result, we concluded, plans would ensure that the providers consumers wanted would be contracted out with OR they would have no customers. (Not all providers bought this argument, particularly the chiropractors.)

Sorry for the long explanation. It can be a difficult topic. Hope this helps. Happy to further clarify.. Have a great TURKEY DAY!!!