

## Public Policy Position: Any Willing Provider

The American Association of Payers, Administrators and Networks (AAPAN) is a national association that represents organizations in the individual group and government health, and workers' compensation markets. AAPAN is the active voice advocating for patient access to appropriate quality health care in these respective markets, and provides a unifying, collaborative forum for member organizations to work in common cause on initiatives for improving healthcare at the federal and state levels.

### Background

"Any Willing Provider" (AWP) statutes, sometimes referred to as "Any Authorized Provider," are laws that require health insurance and specialty health carriers to allow health care providers to become members of the carriers' networks of providers if certain conditions are met.

Such statutes prohibit insurance carriers from limiting membership within their provider networks based upon geography or other characteristics, so long as a provider is willing and able to meet the conditions of network membership set by the carrier.

Laws can be broad in scope, applying to all or most licensed providers in the state. Broad laws typically either spell out a list of providers covered by the provisions (e.g., physicians, pharmacists, chiropractors, speech therapists, podiatrists, optometrists, facilities, etc.) or assert that the provisions apply to all providers licensed in the state without specifically listing any.

Laws can also be limited in scope. Frequently, the limited provisions apply to only pharmacies or pharmacists. In some cases, they apply to a limited number of allied professionals such as chiropractors, optometrists, psychologists and social workers.

Nearly 30 states currently have some kind of AWP statute, including Alabama, Arkansas, Connecticut, Delaware, Georgia, Idaho, Illinois, Indiana, Kentucky, Louisiana, Maine, Massachusetts, Minnesota, Mississippi, Missouri, New Hampshire, New Jersey, North Carolina, North Dakota, South Dakota, Tennessee, Texas, Utah, Virginia, West Virginia, Wisconsin and Wyoming. Many of these laws have been in force for decades; however, the most recent enacted law changes were passed in 2013. On Nov. 7, 2014 South Dakota voters [approved](#) a broad any willing provider binding ballot question.

### ***The Employee Retirement Income Security Act (ERISA) and Federal Preemption***

As with most state regulation of insurance, AWP laws generally apply to only state-regulated policies, especially "fully funded" insurance, and do not apply to "self-funded" insurance plans, such as those offered by the largest employers.

ERISA creates rules and standards for employers who choose to offer pensions and health benefits to employees. ERISA prevents states from imposing conditions on such "ERISA-protected" health insurance plans. This is known as federal preemption of state

laws. Examples of AWP statutes that have been preempted by ERISA include:

**Louisiana:** LSA-R.S. 40:2202 and

**Texas:** V.T.C.A., Insurance Code Art. 21.52B.

Additional information is available at: <http://www.ncsl.org/research/health/any-willing-or-authorized-providers.aspx><sup>1</sup>

### **AAPAN Position: Oppose**

AAPAN opposes AWP statutes because they diminish the exclusivity value of preferred provider networks, which eliminates a competitive tool for group health/government and workers' compensation plans. AWP statutes:

- Create less incentive for providers to negotiate discounted rates and participate in a provider network in return for increased patient flow.
- Without the ability to guarantee exclusivity, make it difficult for AAPAN members to recruit providers and manage a network for their members, particularly when a carrier enters a new market.
- Can inadvertently create less competition and reduced ability for existing competitors to respond to market needs and demands, thereby limiting covered consumer access to appropriate care.
- Can impede the creation of affordable network options and cost savings they can provide, especially for those individuals obtaining coverage through the public exchanges.<sup>2</sup>
- Increase premium costs for employers and covered consumers because plans experience higher administrative costs for credentialing, re-credentialing and network maintenance.<sup>3</sup>

If a state must approve any willing provider regulations, the conditions for network membership should not be limited to the financial rates providers are willing to accept. The conditions must also include provider quality performance, the facilities that the provider agrees to use, provider referral patterns, the provider's willingness to submit required data, and other appropriate factors. If the network is built around a provider-led accountable care organization (ACO), the willing provider also must agree to all the terms for ACO inclusion and be accepted for inclusion.

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<sup>1</sup> National Conference of State Legislatures, <http://www.ncsl.org/research/health/any-willing-or-authorized-providers.aspx>

<sup>2</sup> <https://www.washingtonpost.com/blogs/wonkblog/files/2014/09/Analysis-Any-Willing-Provider.pdf>

<sup>3</sup> <https://www.washingtonpost.com/blogs/wonkblog/files/2014/09/Analysis-Any-Willing-Provider.pdf>