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May 23, 2025

**Formal Comments to the U.S. Department of Justice
Re: Enforcement of 42 U.S.C. § 300gg-5 (Provider Nondiscrimination)
Submitted by Chiropractic Future**

I. Introduction

Chiropractic Future, a not-for-profit advocacy group advancing healthcare through collaboration, improved patient access, and equitable policy, respectfully submits these comments in response to the request of the U.S. Department of Justice's Anticompetitive Regulations Task Force for comments on the DOJ study of regulatory structures that may restrict competition, harm consumers, or elevate healthcare costs. We commend the Department's initiative in addressing this important issue.

We specifically address the federal provider nondiscrimination provision added to the Public Health Service Act at 42 U.S.C. § 300gg-5, Section 2706(a) of the Affordable Care Act. The federal provider nondiscrimination is a critical but underenforced safeguard against anti-competitive insurance practices that arbitrarily disadvantage entire classes of healthcare providers. The failure to enforce this law has enabled insurers to implement reimbursement and access policies that distort healthcare markets, suppress provider competition, limit patient access to cost-effective care, and inflate costs across public and private health systems.

This comment outlines the statutory framework of 42 U.S.C. § 300gg-5, the discriminatory practices it was designed to prevent, and the systemic harms that result from ongoing non-enforcement. We conclude with specific recommendations urging the Department to take coordinated action to restore compliance with this provision and address its widespread violation by health insurers.

II. Legal Framework: 42 U.S.C. § 300gg-5

42 U.S.C. § 300gg-5 prohibits group health plans and health insurance issuers from discriminating against any healthcare provider acting within the scope of their license or certification under applicable state law. The statute states:

"A group health plan and a health insurance issuer 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."

Congress further clarified the provision by stating:

"Nothing in this section shall be construed as preventing a group health plan, a health insurance issuer, or the Secretary from establishing varying reimbursement rates based on quality or performance measures."

The statutory structure and plain meaning of 42 U.S.C. § 300gg-5 prohibit insurers from discriminating against providers solely on the basis of category of licensure. While the statute permits reimbursement variation based on demonstrable differences in quality or performance, it does not permit variation

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based on provider type alone. The inclusion of this narrow exception demonstrates Congress's intent to **limit** insurer discretion in this area and ensure that qualified providers are not economically sidelined simply due to their license category.

Chiropractors, recognized as "physicians" under 42 U.S.C. § 1395x(r) and licensed in all 50 states, are entitled to protections under this provision when acting within their defined scope of practice. However, in practice, health insurers routinely disregard these protections, imposing across-the-board lower reimbursement rates for chiropractors when performing services fully within their scope of practice and billed under the exact same insurance billing codes as other categories of providers. Additionally, health plans restrict access by requiring chiropractors to obtain treatment preauthorization as a condition for payment, when preauthorization is not required of comparable provider categories, and by excluding chiropractors altogether from participation in some provider networks without justification (as allowed only for quality or performance measures).

III. Systemic Violations and Anticompetitive Impact

Despite its clear language, 42 U.S.C. § 300gg-5 has seen little enforcement since its enactment. Health insurers continue to engage in reimbursement practices that violate the nondiscrimination provision, including:

- Uniformly lower reimbursement rates for chiropractors for the same CPT-coded services provided by other provider types;
- Denial of coverage for clinically appropriate care solely because the provider is a chiropractor;
- Preauthorization and visit limits applied only to chiropractic care, even when guidelines support its use as a first-line treatment;
- Network exclusion or tiering of chiropractors without a documented performance-based rationale.

These practices create a de facto suppression of an entire category of healthcare providers, skewing patient choice and reinforcing higher-cost care models. As the Department has recognized, regulatory structures that enable or excuse anti-competitive behavior merit direct scrutiny. The failure to enforce 42 U.S.C. § 300gg-5 represents a significant missed opportunity to restore balance, competition, and efficiency to the healthcare market.

As detailed in the sections that follow, the evidence supports the clinical effectiveness of chiropractic care, while also demonstrating its role in reducing downstream healthcare costs and mitigating consumer harms such as unwarranted restrictions on patient choice of provider, opioid exposure, and delayed recovery. There is no evidentiary basis for insurers to deny equitable reimbursement to chiropractors. It reflects systemic bias that undermines value-based, market-driven reform efforts and directly contradicts Congressional intent as expressed in 42 U.S.C. § 300gg-5.

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IV. Clear Evidence of Quality and Performance

As demonstrated above, 42 U.S.C. § 300gg-5 prohibits discrimination against licensed providers unless a difference in participation or reimbursement is **based on quality or performance**. No such justification exists for chiropractors as a class.

Quite the contrary, the clinical effectiveness of chiropractic care, especially for musculoskeletal conditions, is well established. Key evidence includes:

- A 2018 randomized controlled trial in *JAMA Network Open* found that service members with low back pain receiving chiropractic care alongside usual medical care experienced significantly greater improvement in pain and disability scores compared to those receiving medical care alone (Goertz et al., 2018).
- A 2024 systematic review concluded, “Patients with spine-related musculoskeletal pain who consulted a chiropractor as their initial provider incurred substantially decreased downstream healthcare services” (Farabaugh et al., 2024).
- A 2024 retrospective cohort study published in *BMC Musculoskeletal Disorders* reported that patients receiving spinal manipulative therapy after lumbar discectomy were 45% less likely to require reoperation, further supporting the notion that chiropractic appears to offer cost avoidance and clinical value (Trager et al., 2024).

There is no evidence of inferior outcomes, increased risk, or lower standards of care that would justify network exclusion, reduced reimbursement, or administrative barriers. Systemic insurer practices that discriminate against chiropractors are not quality-based — they are anticompetitive and in violation of federal law.

V. Opioid Crisis and the Need for Conservative Care

Anticompetitive insurance practices that limit access to chiropractic care, despite its clinical appropriateness, distort treatment pathways and contribute to the ongoing opioid crisis. By economically disadvantaging licensed providers of non-pharmacologic care, insurers not only undermine compliance with 42 U.S.C. § 300gg-5, but also entrench models of care that increase reliance on prescription opioids and expose patients to preventable harm.

- Evidence highlights the magnitude of this impact: A 2018 cohort study published in *Journal of Alternative and Complementary Medicine* found that chiropractic care for low back pain was associated with significantly lower odds of opioid use. In fact, this study found that patients had 55% lower odds of filling a prescription compared to patients who did not receive chiropractic care (Whedon et al., 2018).
- A 2020 analysis in *Pain Medicine* confirmed that chiropractic utilization for spinal pain disorders is associated with a 50% reduction in the risk of opioid prescription fills, with even greater reductions when care begins early (Whedon et al., 2020).

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- A 2022 study in *Chiropractic & Manual Therapies* reported that Medicare enrollees with spinal pain who saw both a chiropractor and a primary care physician had less than half the risk of filling an opioid prescription, as compared to those who received primary medical care alone (Whedon et al., 2022).

These outcomes reflect not only missed opportunities for safer care, but also a broader policy failure. When reimbursement systems suppress conservative care access, the result is a distorted healthcare market that increases addiction risk, burdens families, and imposes long-term societal costs. These harms are not abstract—they directly affect American consumers, workers, and businesses.

VI. Inequitable Coverage Policies Distort Markets and Inhibit Lower-Cost Care Options

The financial efficacy of chiropractic care is well established, particularly in the management of musculoskeletal conditions such as low back pain. Despite this, discriminatory reimbursement practices by insurers, enabled by the ongoing governmental non-enforcement of 42 U.S.C. § 300gg-5, systematically steer patients away from lower-cost conservative care and toward more expensive interventions. These practices not only violate federal nondiscrimination law but also distort healthcare markets by suppressing provider competition, reducing patient choice, and increasing overall system costs. In short, they harm competition and, as a result, harm consumers.

Recent studies illustrate this clearly:

- A 2010 analysis of private insurance claims found that episodes of low back pain care initiated with a chiropractor were nearly 40% less costly than those initiated by a medical doctor, and approximately 20% less expensive after controlling for risk (Liliedahl et al., 2010).
- A 2024 systematic review of 44 studies found that patients who began care with chiropractors experienced significantly lower downstream healthcare utilization and associated costs, including fewer surgeries, injections, hospitalizations, and emergency department visits (Farabaugh et al., 2024).
- A 2012 Optum Health white paper analyzing internal claims data found that initiating care for back pain with a chiropractor resulted in 45% lower episode costs compared to physical therapy and 81% lower costs compared to orthopedic care (Kosloff, Optum, 2012).

When federal authorities fail to enforce nondiscrimination protections, dominant insurers are permitted to marginalize cost-effective providers in favor of higher-cost services. The result is a less competitive marketplace, inflated healthcare spending, and fewer affordable options for American patients.

VII. Broader Systemic Harms of Discriminatory Reimbursement and Restricted Access

Discriminatory reimbursement practices and restricted access to chiropractic care, contrary to the intent of 42 U.S.C. § 300gg-5, result in broad systemic harms that undermine competition, destabilize care delivery, and increase costs across the healthcare system.

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- **Higher Healthcare Spending:** Steering patients away from chiropractic care leads to higher downstream costs through avoidable imaging, surgical interventions, and specialist referrals. This outcome reflects insurer discrimination not grounded in performance or quality, contravening 42 U.S.C. § 300gg-5.
- **Suppressed Market Competition:** Systemic under-reimbursement reduces the financial viability of chiropractic practices, particularly in underserved areas, reducing patient choice and inflating prices. Disparities not linked to quality or performance unfairly exclude qualified providers and conflict with 42 U.S.C. § 300gg-5.
- **Misalignment with Value-Based Care:** Discrimination against chiropractors undermines efforts to expand high-value, low-cost care options central to federal reform efforts. Without adherence to nondiscrimination principles, these care models remain distorted and ineffective.

VIII. Conclusion and Recommendations

Chiropractic Future urges the Department of Justice to act on the clear intent of Congress expressed in 42 U.S.C. § 300gg-5. The persistent, systemic violation of this statute by health insurers has suppressed competition, elevated costs, and limited patient access to safe, effective, and proven care. We respectfully recommend the following actions:

1. **Prioritize enforcement of 42 U.S.C. § 300gg-5** as a mechanism to restore lawful competition among provider types.
2. **Investigate insurer reimbursement practices** that appear to vary by provider type without performance- or quality-based justification.
3. **Collaborate with HHS and CMS** to ensure coverage and reimbursement policies adhere to nondiscrimination requirements.
4. **Support provider-level parity** in value-based care models to ensure all licensed providers, including chiropractors, can participate equitably.

We thank the Department for its leadership in promoting competitive, equitable, and patient-centered healthcare markets.

Respectfully submitted,

Chiropractic Future

A handwritten signature in black ink, appearing to read "Kristi Hudson".

Kristi Hudson
Leadership Committee, Chairperson

A handwritten signature in black ink, appearing to read "Marc Abila".

Marc Abila
Workgroup Chairperson

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