

October 26, 2022

The Honorable Xavier Becerra
Secretary
U.S. Department of Health & Human
Services
Hubert H. Humphrey Building
200 Independence Avenue S.W.
Washington, D.C., 20201

The Honorable Martin Walsh
Secretary
U.S. Department of Labor
200 Constitution Ave N.W.
Washington, D.C., 20210

The Honorable Janet Yellen
Secretary
U.S. Department of the Treasury
1500 Pennsylvania Avenue, N.W.
Washington, D.C. 20220

Dear Secretaries Becerra, Walsh, and Yellen:

On behalf of the undersigned organizations representing Advanced Practice Registered Nurses (APRNs) and advanced practice nursing education, we are writing to you today to express our deep concern about the lack of rulemaking on provider nondiscrimination, [section 2706(a) of the Public Health Service Act. The rulemaking is almost a year past the original deadline set by Congress for the release of a rule. We respectfully request the prompt promulgation of regulatory provisions that protect patient access to care and choice, enable all providers to work at the top of their scope of practice and promotes competition. We are happy to meet with you in another listening session to continue to provide feedback on provider nondiscrimination similar to the one that occurred in January 2022.

The APRN Workgroup is comprised of organizations representing Advanced Nursing Education, Certified Nurse-Midwives (CNMs), Clinical Nurse Specialists (CNSs), Certified Registered Nurse Anesthetists (CRNAs), and Nurse Practitioners (NPs). America's growing numbers of highly educated APRNs advance healthcare access, quality improvement and cost-effective healthcare delivery across all settings, regions and populations, particularly among the rural and medically underserved.

As you are aware, in 2010, Congress passed the *Patient Protection and Affordable Care Act* (ACA), which included amendments to the Public Health Services Act (PHS Act). Section 2706 of the PHS Act prohibits private health plans from discriminating against qualified licensed healthcare professionals based on their licensure. However, this provision was not implemented through the rulemaking process and guidance and enforcement of this provision have been wholly inadequate. The latest action taken on this issue was sub-regulatory guidance in the form of a 2015 Frequently Asked Questions (FAQ) document. The FAQ stated, "Until further guidance is issued, the Departments will not take any enforcement action against a group health plan, or health insurance issuer offering group or individual coverage, with respect to implementing the requirements of PHS Act section 2706(a) as long as the plan or issuer is using a good faith, reasonable interpretation of the statutory provision."

Congress has made clear that federal implementation to date has not been sufficient. In December 2020, the *Consolidated Appropriations Act of 2021*, was signed into law, which included the *No Surprises Act*. Section 108 of the *No Surprises Act* requires the Secretaries of the Departments of Health and Human Services, Labor and Treasury to issue a proposed rule no later than January 1, 2022 to implement the provider non-discrimination protections under Section 2706 of the ACA, with a final rule issued no later than six months after the conclusion of the 60 day comment period on the proposed rule. Based on the regulatory timeline required under Section 108, a final rule should have already been promulgated to permanently implement these protections against provider discrimination. We are very concerned that numerous deadlines have passed to promulgate this rule and we encourage the agencies to release this rule in the very near future.

In the absence of meaningful enforcement of the statute, health plans and insurers have refused to allow our members in their networks or to contract with them, have reimbursed our members unequally for the same high-quality care as our physician colleagues, have imposed supervision requirements beyond what is required by state and federal laws, and have not allowed APRNs to participate in value-based care programs solely based on licensure. The clinicians that our organizations represent have continued to face discrimination from insurers because of their licensure, including:

- A large multi-state health plan has a program that rewards high performing physicians with services such as enhanced provider services, expedited credentialing, digital tools, and reduced patient cost-sharing. NPs and other clinicians are excluded from this program, even if they satisfy the same performance metrics, solely based on licensure.
- Anthem Blue Cross in California offered a lower rate to Certified Registered Nurse Anesthetists (CRNAs) who are licensed to provide anesthesia care in California independently. They described their reasoning by stating that they were basing this decision on CRNAs licensure saying, “[Anthem] believes it is in compliance with the law in paying mid-level providers less than physicians”.
- An insurer in Massachusetts will also not credential CRNAs that are part of an anesthesia group that includes physicians because they claim that CRNA services are billed under physicians, which is not true.
- Anthem reimburses CRNAs less than anesthesiologists for providing labor epidurals.

APRNs are the clinicians of choice for many patients, especially those in rural and underserved areas who are adversely affected by lack of access to care even if they have coverage. We urge your departments to promulgate a strong and enforceable provider nondiscrimination rule that protects the needs of patients and consumers and enables APRNs to practice without having to face barriers from health plan policies and practices. Without enforcement, health plans will continue to discriminate against providers, especially non-physician providers who are working within their scope of practice. A strong and enforceable rule is a critical element to ensuring that patients have access to the care they deserve from the provider of their choice. This will increase competition, drive down costs and benefit consumers. We are prepared to continue to be constructive partners in this effort.

Should you have any questions, you can reach out to Randi Gold, Senior Associate Director of Federal Government affairs at the American Association of Nurse Anesthesiologists at

rgold@aana.com or (202) 484-8400. Thank you for your consideration and we look forward to hearing from you.

Sincerely,

American Academy of Nursing

American Association of Colleges of Nursing

American Association of Nurse Anesthesiology

American Association of Nurse Practitioners

American College of Nurse Midwives

American Nurses Association

Gerontological Advanced Practice Nurses Association

National Association of Clinical Nurse Specialists

National Association of Nurse Practitioners in Women's Health

National Association of Pediatric Nurse Practitioners

National League for Nursing

National Organization of Nurse Practitioner Faculties

CC: Senator Ron Wyden, Chairman of Senate Finance Committee

Senator Mike Crapo, Ranking Member of Senate Finance Committee

Senator Patty Murray, Chairwoman of Senate Health, Education, Labor and Pensions Committee

Senator Richard Burr, Ranking Member of the Senate Health, Education, Labor, and Pensions Committee

Representative Frank Pallone, Chairman of House Energy and Commerce Committee

Representative Cathy McMorris Rodgers, Ranking Member of House Energy and Commerce Committee

Representative. Richard Neal, Chairman of House Ways and Means Committee

Representative Kevin Brady, Ranking Member of House Ways and Means Committee

Representative Robert C. Scott, Chairman of House Education and Labor Committee

Representative Virginia Foxx, Ranking Member of House Education and Labor Committee