December 14, 2023

Dora Hughes, MD
Director and Chief Medical Officer and Director
Center for Clinical Standards and Quality
Centers for Medicare & Medicaid Services
Department of Health and Human Services
7500 Security Boulevard
Baltimore, MD 21244

Dear Dr. Hughes:

On behalf of the undersigned organizations representing Advanced Practice Registered Nurses (APRNs) and advanced practice nursing education, we extend you our warm congratulations on your appointment as Director and Chief Medical Officer for the Center for Clinical Standards and Quality. We are writing to request a meeting with you to discuss regulatory waivers issued during the public health emergency that have enabled APRNs to practice to the full extent of their education and clinical training.

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). As of 2021, over 250,000 APRNs were treating Medicare patients, making it essential that CMS remove barriers to care and not implement policies that impose additional barriers to care for APRNs and the patients they serve. 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.

While we appreciate that CMS had issued waivers that authorized APRNs to practice to the full extent of their state scope of practice during the Public Health Emergency (PHE), we were disappointed to learn that CMS chose not to extend many of these waivers permanently. These waivers include:

- **Physician Services. 42 CFR §482.12(c)(1)–(2) and §482.12(c)(4):** Waiving requirements that Medicare patients admitted to a hospital be under the care of a physician, allowing other practitioners to practice to the top of their licensure, while authorizing hospitals to optimize their workforce strategies. For example, a recent report outlined that Certified Registered Nurse Anesthetists (CRNA's) in states that experienced a major impact due to executive orders (including the removal of both state and federal requirements), were significantly more likely to experience expanded clinical practice.
- **SNF Physician Visit and Delegation Waivers 42 CFR 483.30(c)(3) and 42 CFR 483.30(e)(4):** Authorizing NPs to perform all mandatory visits in a SNF has enabled practices and SNFs to maximize their workforce. These waivers improve continuity of care and infection control by

reducing unnecessary contacts between patients and multiple providers. In May of 2022 this waiver was discontinued, yet research has shown the value of NPs providing care in long-term care facilities,[1] making it critically important to ensure that SNF patients continue to receive prompt access to the high-quality care provided by NPs.

- **Responsibilities of Physicians in Critical Access Hospitals (CAHs). 42 CFR § 485.631(b)(2):** Making the physician physical presence waiver permanent allows certain APRNs in CAHs to practice to the full extent of their education and clinical training and enables the entire health care team to practice to its fullest capacity in provider shortage areas.
- **Rural Health Clinic (RHC) and Federally Qualified Health Center (FQHC) Physician Supervision of NPs 42 CFR 491.8(b)(1):** Waiving the physician supervision of NPs in RHCs and FQHCs requirement has provided much needed workforce flexibility in rural and underserved communities where provider shortages are being exacerbated by COVID-19. This waiver is also consistent with the statutory definition of RHCs and FQHCs which includes non-physician directed clinics, and states that when an RHC or FQHC is not directed by a physician, it must have arrangements for physician involvement in accordance with State and local law.[2] We appreciate that CMS has extended this flexibility until the end of the year in which the PHE ends and is exploring options to make this flexibility permanent[3], and strongly encourage the agency to do so.
- **Anesthesia Services. 42 CFR §482.52(a)(5), §485.639(c) (2), and §416.42 (b)(2):** Allowing certified registered nurse anesthetists (CRNA), in accordance with a state emergency preparedness or pandemic plan, to practice to the full extent of their license by permanently extending the CMS waiver removing physician supervision as a Condition of Participation.

Waiving these requirements permanently will strengthen the healthcare workforce to ensure timely delivery of quality services which will improve health equity and increase access to care. Removal of these barriers is especially important in light of the provider shortage, which was exacerbated by the pandemic. Reinstating these restrictions will cause further negative impacts on health equity and access to care. As rural and underserved areas increasingly rely on APRNs, removing barriers to our practice will help countless Americans as well as financially distressed rural healthcare facilities. This recommendation aligns with the National Academy of Medicine's recommendation that, "all changes in policies and state and federal laws adopted in response to COVID-19 should be made permanent, including those that expanded scope of practice, telehealth eligibility, insurance coverage, and payment parity for services nurses provide."[4] In addition, removing barriers to APRN practice aligns with recommendations published in the New England Journal of Medicine[5] and echoed by bipartisan stakeholders such as the American Enterprise Institute[6], Bipartisan Policy Center[7], National Governors

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[1] National Academies of Sciences Engineering, and Medicine. *The National Imperative to Improve Nursing Home Quality*, at page 236. Retrieved from: https://nap.nationalacademies.org/catalog/26526/the-national-imperative-to-improve-nursing-home-quality-honoring-our.

[2] 42 U.S.C. 1395x(aa).

[3] https://www.cms.gov/files/document/covid-19-emergency-declaration-waivers.pdf, pages 12-13.

[4] https://nap.nationalacademies.org/resource/25982/FON%20One%20Pagers%20Lifting%20Barriers.pdf

[5] Frogner, Fraher, Spetz, Pittman, Moore, Beck, Armstrong and Buerhaus. (2020) Modernizing scope-of-Practice regulations – Time to Prioritize Patients. New England Journal of Medicine.382;7.p 591-593.

[6] https://www.aei.org/research-products/report/nurse-practitioners-a-solution-to-americas-primary-care-crisis/.

[7] https://bipartisanpolicy.org/download/?file=/wp-content/uploads/2019/03/BPC-Health-Care-Cost-Drivers-Brief-Sept-2012.pdf (Page 20).

Association[8] and the Brookings Institution[9], multiple presidential administrations,[10,11] and the Federal Trade Commission has highlighted how barriers to practice on APRNs are unnecessary and limit competition.[12]

We request a meeting with you to further discuss our views. You can reach out to Romy Gelb-Zimmer, American Association of Nurse Anesthesiology Senior Associate Director of Federal Regulatory and Payment Policy at rgelb-zimmer@aana.com or (202) 484-8400. Thank you for your consideration and we look forward to hearing from you.

Sincerely,

American Academy of Nursing, AAN
American Association of Colleges of Nursing, AACN
American Association of Nurse Anesthesiology, AANA
American Association of Nurse Practitioners, AANP
American College of Nurse-Midwives, ACNM
American Nurses Association, ANA
Gerontological Advanced Practice Nurses Association, GAPNA
National Association of Clinical Nurse Specialists, NACNS
National Association of Nurse Practitioners in Women's Health, NPWH
National Association of Pediatric Nurse Practitioners, NAPNAP
National League for Nursing, NLN
National Organization of Nurse Practitioner Faculties, NONPF

[8] https://www.nga.org/wp-content/uploads/2019/08/1212NursePractitionersPaper.pdf.

[9] https://www.brookings.edu/wp-content/uploads/2018/06/AM_Web_20190122.pdf.

[10] https://www.govinfo.gov/content/pkg/FR-2019-10-08/pdf/2019-22073.pdf (see Section 5).

[11] https://www.healthaffairs.org/do/10.1377/forefront.20220404.728371/. (ACO REACH also includes a nurse practitioner services benefit enhancement designed to reduce barriers to care access, particularly for individuals with limited access to physicians. Through waivers, this strategy would allow nurse practitioners to certify patient needs (for example, for hospice) and order and supervise certain services (for example, cardiac rehabilitation).

[12] https://www.ftc.gov/system/files/documents/reports/policy-perspectives-competition-regulation-advanced-practice-nurses/140307aprnpolicypaper.pdf.