

May 27, 2025

Federal Trade Commission (FTC)

*Submitted via Regulations.gov*

**RE: Reducing Anti-Competitive Regulatory Barriers**

To Whom it May Concern,

The below associations representing Advanced Practice Registered Nurses (APRNs) and advanced practice nursing education appreciate the opportunity to provide comment to the FTC on ways to reduce anti-competitive regulatory barriers within federal programs. The FTC has long recognized that regulatory barriers that prevent APRNs from practicing to the full extent of their education and clinical training are anti-competitive. As stated by the FTC in its staff policy paper *Competition and the Regulation of Advanced Practice Nurses*, “Physician supervision requirements may raise competition concerns because they effectively give one group of health care professionals the ability to restrict access to the market by another, competing group of health care professionals, thereby denying health care consumers the benefits of greater competition.”<sup>1</sup> This RFI is an opportunity to build off of this report by removing anti-competitive federal regulatory barriers, and we look forward to working with the FTC in this effort.

The APRN Workgroup represents all four APRN roles, Certified Registered Nurse Anesthetist (CRNA), Nurse Practitioner (NP), Certified Nurse Midwife (CNM), and Clinical Nurse Specialist (CNS) as well as advanced nursing education. APRNs are prepared at the master’s or doctoral level to provide primary, acute, chronic and specialty care to patients in all settings across all ages and backgrounds. APRNs are a growing, critical, and highly educated part of the healthcare workforce. APRNs advance healthcare access, improve quality of care, and provide cost-effective healthcare delivery, particularly in rural and underserved communities. Yet many outdated policies hamper APRNs from serving to the full extent of their license and deepen healthcare access gaps.

Importantly, removing barriers for APRNs was a policy objective of President Trump’s first Administration. We strongly support Section 5 of Executive Order 13890 on *Protecting and Improving Medicare for Our Nation’s Seniors*, which called for removing burdensome requirements in the Medicare program that are “more stringent than applicable Federal or State laws require and that limit professionals from practicing at the top of their profession”, as well as calling for a review of regulatory policies that lead to reimbursement disparities between physicians and non-physician practitioners.<sup>2</sup> Additionally, the *Reforming America’s Healthcare System Through Choice and Competition* report from the Department of Health and Human Services, the Department of Treasury, and the Department of Labor<sup>3</sup> called for removing barriers to care for clinicians to authorize them to practice to the top of their license. These changes are critical to ensuring efficiency, and a patient’s ability to receive care from their chosen healthcare

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<sup>1</sup> <https://www.ftc.gov/system/files/documents/reports/policy-perspectives-competition-regulation-advanced-practice-nurses/140307aprnpolicypaper.pdf>.

<sup>2</sup> Executive Order on Protecting and Improving Medicare for Our Nation’s Seniors – The White House

<sup>3</sup> [Reforming America’s Healthcare System Through Choice and Competition](#)

provider. Below are specific recommendations with priority areas for FTC review that have an anti-competitive impact on APRN practice and patient access to care.

### **1. Remove Restrictive Medicare and Medicaid Conditions of Participation/Coverage**

We encourage the FTC to review and call for the rescission of restrictive Medicare and Medicaid Conditions of Participation and coverage that prevent APRNs from practicing to the full extent of their education and clinical training, and are federal overreach of State law. As noted above by the FTC, these policies give one group of providers the ability to restrict access to APRNs, raising anti-competitive concerns. As noted above, this is also in alignment with Section 5 of EO 13890 issued during President Trump's first term which directed the Secretary of Health and Human Services to propose "a regulation that would eliminate burdensome regulatory billing requirements, conditions of participation, supervision requirements, benefit definitions, and all other licensure requirements of the Medicare program that are more stringent than applicable Federal or State laws require and that limit professionals from practicing at the top of their profession".

Examples of Medicare conditions of participation and coverage that are more stringent than State law include requirements that physicians perform certain mandatory assessments in skilled nursing facilities, that physicians supervise anesthesia services provided by CRNAs, that every Medicare or Medicaid patient admitted to a hospital be under the care of a physician, that require physician supervision of APRNs in rural health clinics and federally-qualified health centers, and conditions of coverage that prevent APRNs from ordering certain Medicare covered services for their patients. These policies hinder the ability of APRNs to practice to the full extent of their education and clinical training, deprive patients of their choice of clinician, and limit health care competition.

### **2. Finalize Rulemaking on Provider Non-Discrimination**

According to the Public Health Service (PHS) Act Section 2706(a), "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."

This provision is critical to patient access and choice and competition within the healthcare marketplace. However, the Tri-Departments<sup>4</sup> have never promulgated a rule to implement and enforce this provision. Recognizing the need for an enforceable rule implementing Section 2706(a) of the PHS Act, Congress passed the *Consolidated Appropriations Act of 2021*, which set a statutory deadline of January 1, 2022 to begin rulemaking, with a final rule due no later than August 2022. Despite the clear intent of this language and multiple Congressional letters calling for a strong rule implementing these protections, the Tri-Departments have not yet acted nor have they worked to enforce it.

In fact, the Centers for Medicare & Medicaid Services asserted in sub-regulatory guidance, in the form of a 2015 Frequently Asked Questions (FAQ) document, that, "Until further guidance is issued, the Departments will not take any enforcement action against a group health plan, or

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<sup>4</sup> The federal agencies responsible for implementing Public Health Service Act Section 2706(a): the Department of Health and Human Services, the Department of Labor, and the Department of the Treasury.

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.”<sup>5</sup> However, numerous plans/issuers have plainly not acted in good faith in the years since the Tri-Departments were supposed to have issued rules implementing the provider non-discrimination provision. Yet the Tri-Departments have actively chosen to ignore Congressional intent in not enforcing Section 2706(a) of the PHS Act. The Tri-Departments’ failure to enforce Section 2706(a) of the PHS Act will likely embolden other plans/issuers to issue similar policies.

Such discrimination suppresses competition, inflates costs, and denies patients the ability to receive quality care from qualified APRNs. It also directly impairs small, independent practices by limiting fair access to networks and contracts. By refusing to enforce provider non-discrimination laws, the Tri-Departments have permitted insurance companies to ignore federal provider non-discrimination protections, undermining non-physician providers nationwide and creating an anti-competitive practice environment.

Without an enforceable rule, many APRNs continue to face undue barriers to providing care, based on discriminatory policies from insurers, which hinders their ability to compete in the marketplace. We encourage the FTC to review these anti-competitive insurance policies and work with the agencies responsible for promulgating the rule to ensure that the rulemaking provides a robust enforcement mechanism to protect against these anti-competitive insurance policies.

### **3. Address Anti-Competitive Reimbursement Disparities**

Section 5 of EO 13890 also called for a “a comprehensive review of regulatory policies that create disparities in reimbursement between physicians and non-physician practitioners and proposing a regulation that would, to the extent allowed by law, ensure that items and services provided by clinicians, including physicians, physician assistants, and nurse practitioners, are appropriately reimbursed in accordance with the work performed rather than the clinician’s occupation.” We encourage the FTC to help conduct this review, as these reimbursement disparities place APRNs at a significant disadvantage in competing in the marketplace.

Examples include health plan policies (as discussed above) that reimburse APRNs at lower rates solely based on their licensure or prevent them from entering a health plan network; reimbursement disparities within the Medicare and Medicaid programs including exclusion from Federal programs such as the Medicare 10% health professional shortage area bonus program; and restrictive policies that limit their ability to participate in alternative payment models. Addressing these barriers will improve parity and competition within the health care system.

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<sup>5</sup> Center for Consumer Information and Insurance Oversight. Affordable Care Act Implementation FAQs (Set 27). May 26, 2015. <https://www.cms.gov/cciiio/resources/fact-sheets-and-faqs/downloads/aca-faqs-part-xxvii-moop-2706-final.pdf>. Accessed: May 15, 2025.

On behalf of APRNs across our nation, we welcome the opportunity to continue our work with the FTC on removing anti-competitive barriers to practice. Please reach out to Romy Gelb-Zimmer, AANA Director of Regulatory Affairs at [rgelb-zimmer@aana.com](mailto:rgelb-zimmer@aana.com) or Frank Harrington, AANP Director of Reimbursement and Regulatory Affairs at [fharrington@aanp.org](mailto:fharrington@aanp.org) for further discussion on these topics. Thank you for your consideration and we look forward to working with you.

Sincerely,

American Association of Colleges of Nursing  
American Association of Nurse Anesthesiology  
American Association of Nurse Practitioners  
American College of Nurse-Midwives  
American Nurses Association  
American Organization for Nursing Leadership  
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  
Oncology Nursing Society