



American Association of
NURSE ANESTHESIOLOGY

October 26, 2022

The Honorable Xavier Becerra
Secretary
U.S. Department of Health & Human Services
200 Constitution Ave N.W.
Washington, D.C. 20210

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 nation's over 59,000 members of the American Association of Nurse Anesthesiology (AANA), we are writing to you today to express our concern about the continued delay in release of a rule on the issue of provider nondiscrimination [Section 2706(a) of the Public Health Service Act]. The rulemaking is almost a year past the original deadline set by Congress and the agencies have also missed a few self-imposed deadlines for the release of a rule. We respectfully request the prompt promulgation of the regulatory provisions that protect patient access to care and choice, enable all providers to work at the top of their scope of practice and promote competition. We are happy to meet with you in another listening session to continue to provide feedback on provider nondiscrimination.

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."

aana.com | CRNA focused. CRNA inspired.

25 Massachusetts Avenue NW, Suite 320, Washington, DC 20001-1408

Phone 202.484.8400

In December 2020, the *Consolidated Appropriations Act of 2021*, which included the *No Surprises Act*, was signed into law. Section 108 of the *No Surprises Act* requires the Departments of Health and Human Services, Labor and Treasury to implement Section 2706 of the ACA by promulgating rules on provider non-discrimination by January 1, 2022. Through the last two years, our organizations have highlighted multiple issues surrounding this provision, stemming from the lack of official rulemaking and enforcement. In the absence of meaningful enforcement of the statute, health plans and insurers have refused to allow our members in their networks, refused to contract with our members, have reimbursed our members unequally for the same high-quality care as our physician colleagues and have imposed supervision requirements beyond what is required by state and federal laws, solely based on licensure.

We urge your departments to quickly develop a strong and enforceable provider nondiscrimination rule to ensure that patients have access to care from the provider of their choice. Without rulemaking and enforcement, insurers will continue to be able to unfairly lower reimbursement and add additional barriers to CRNAs, decreasing competition and limiting access to care especially in rural and underserved areas. Promulgation of a strong and enforceable provider nondiscrimination rule that protects the needs of patients and consumers and also allows CRNAs to practice without having to face unlawful barriers from health plan policies and practices.

We are firmly committed to our continued work with the agency to help reduce barriers to CRNA practice and ensuring patients have access to timely, cost effective and high-quality care and we appreciate the work your agencies are doing on these important matters. Should you have any questions, please feel free to contact the AANA Senior Associate Director, Federal Regulatory and Payment Policy, Randi Gold, at 202-741-9082 or rgold@aana.com.

Sincerely,



Angela Mund, DNP, CRNA
AANA President

cc: William Bruce, MBA, CAE, AANA Chief Executive Officer
Lorraine Jordan, PhD, CRNA, CAE, FAAN, AANA Chief Advocacy Officer
Randi Gold, MPP, AANA Senior Associate Director Federal Regulatory and Payment Policy