

October 17, 2023

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 Julie Su
Acting 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 again regarding promulgation of a regulation on the vital issue provider nondiscrimination (2706(a) of the Public Health Service Act). We were pleased to see this issue raised in a Request for Information on Ways To Improve Mental Health and Substance Use Disorder Benefits Through Other Consumer Protection Laws located in the proposed rule on Requirements Related to the Mental Health Parity and Addiction Equity Act (MHPAEA).

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.

The Mental Health Parity and Addiction Equity Act was passed to ensure that individuals in group health plans or with group or individual insurance coverage who seek treatment for covered mental health conditions or SUDs do not face greater barriers to accessing benefits for such mental health conditions SUDs that they would face when seeking coverage for medical or surgical treatments. It is important that patients have the access and opportunity to receive these needed treatments from the providers who provide them. We strongly agree that patients should have access to providers for all types of care they require, including mental health and SUD treatments. One essential way this can happen is through promulgation of a regulation on provider nondiscrimination which will help put an end to the discrimination many of our members face by private health insurers, simply because of their licensure. This type of discrimination decreases access to care and increases healthcare costs.

Inclusion on stakeholder thoughts of how a rule on the provider nondiscrimination provision will help increase access to mental health and SUD is a positive step in the right direction. We know that access to these services can be increased with a meaningful rulemaking on section 2706(a) of the Public Health Service Act as soon as possible.

In 2010, Congress passed the *Patient Protection and Affordable Care Act* (ACA). Section 2706 of the ACA prohibits plans from discriminating against qualified licensed healthcare professionals based on their licensure.¹ However, this provision was not implemented through the formal rulemaking process, and instead only addressed through sub-regulatory guidance in a “Frequently Asked Questions” document.² To further address concerns regarding discrimination, 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 three agencies (HHS, DOL, and USDT) to implement Section 2706 of the ACA by promulgating rules on provider nondiscrimination by January 1, 2022.³ As of the publication of this proposed rule, the agencies have not met their statutorily required deadline.

The agencies have missed numerous deadlines to issue this rule, the latest being the August 2023 deadline that was published in the Spring 2023 Unified Agenda of Regulatory and Deregulatory Actions. We are greatly disappointed that the agencies have failed to meet the statutory deadline of January 1, 2022 for this rulemaking. As noted in this proposal, the Agencies held a listening session on January 19, 2022, regarding the implementation of provider nondiscrimination, and have yet to promulgate this rule. Almost 2 years have passed since the congressionally mandated deadline for the implementation of this provision. Therefore, it is incumbent upon the agencies to swiftly issue a proposed rule pursuant to Congress’ directive.

The need for prompt rulemaking is critical because many private health insurers continue to discriminate against health care providers based on their licensure. Without an enforceable rule, many APRN providers face undue barriers to providing care, based on discriminatory policies from insurers.

The clinicians that our organizations represent have continued to face barriers to providing care due to discrimination from insurers because of their licensure, including:

- Cigna lowered reimbursement for all Certified Registered Nurse Anesthetists (CRNAs) QZ services to 85% of the fee schedule, despite the fact that CRNAs are able to bill 100% of the Medicare fee schedule and without regard to outcomes or state scope, based solely on licensure.
- 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”.

¹ [About the ACA | HHS.gov](#)

² [Affordable Care Act Implementation FAQs - Set 15 | CMS](#)

³ [PUBL260A.PS \(congress.gov\)](#)

- 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.
- An insurer in Arkansas only reimburses nurse practitioners (NPs) for services for patients with presenting problems of low to moderate severity. This restricts NPs from providing services within their scope of practice and limits access to care for vulnerable patients, including for patients in need of mental health or behavioral health care.
- One APRN member reported, “Aetna and Optum UBH have both declined credentialing me. I work under an attending physician and [the insurers] will not allow me to care for mental health patients. There are many patients that have this insurance and cannot access quality mental health services because they cannot afford to pay out of pocket. This leads to patients unable to be seen and care disrupted. Many of the patients live near the clinic so that is the closest medical care.”
- Humana sent an email to one APRN member that states that they will not credential this APRN member when this member received got full practice autonomous license for primary care in 2020 and referred to APRNs as ‘physicians extenders and mid level providers’.
- Blue Cross Blue Shield of Louisiana will not credential Clinical Nurse Specialists, which increased patients’ out of pocket costs and ultimately limits them from receiving care from a provider they trust.

As staff within the Departments of Health and Human Services, Labor and Treasury continue work on promulgation of a regulation on provider nondiscrimination, we make the following recommendations to ensure that further discriminatory policies against APRNs are prevented:

- Prohibit health insurers, health plans and payors from establishing varying reimbursement rates for APRNs practicing within their state licensure and state scope of practice laws to ensure they are reimbursed equitably with their physician counterparts for the same services.
- Prohibit health insurers, health plans and payors from denying coverage of services and procedures within APRN scope of practice.
- Prohibit health insurers, health plans and payors from imposing requirements for supervision or additional certification or training beyond state licensing requirements.
- Prohibit health insurers, health plans and payors from issuing policies that deny APRN access to insurance networks and advanced payment models and prohibit geographic limitations on provider network participation.
- Create a timely, organized, and efficient notice and grievances process for providers to allow for resolution of their complaints.

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 equitable 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 Association of Nurse Anesthesiology

American Association of Nurse Practitioners

National Association of Clinical Nurse Specialists

American College of Nurse-Midwives

American Nurses Association

Gerontological Advanced Nurse Practitioners Association

National Association of Pediatric Nurse Practitioners

National Association of Nurse Practitioners in Women's Health

National League for Nursing

National Organization of Nurse Practitioner Faculties