



October 12, 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, Acting Secretary Su, and Yellen:

On behalf of the undersigned organizations representing the Patient Access to Responsible Care Alliance (PARCA), we are writing to you again regarding promulgation of a regulation on the vital issue provider nondiscrimination (Section 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). However, promulgation of this regulation is well past due, and the lack of enforcement of this law continues to hurt patient access to care. We strongly urge the agencies to issue this rule as soon as possible with all due haste to help increase patient access to high quality care, including critical mental health and substance use disorder (SUD) care.

As member organizations of PARCA, we represent non-MD/DO Medicare recognized health and mental health care providers who provide high-quality, evidence-based care to millions of Americans, especially to those living in rural and underserved areas. As the provider of choice for many patients, we understand the importance of ensuring providers are recognized to practice to the full extent of their training, education, licensure, certification, and experience to increase patient access to care and competition, lower costs and maintain quality and safety. Collectively, PARCA member organizations represent over four million providers throughout the nation, with expertise in a wide variety of patient care areas. Many of the providers we represent play an integral role in offering care for patients who suffer from mental health and SUD issues.

MHPAEA 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 these conditions than when seeking coverage for medical or surgical treatments. It is important that patients have access to these needed treatments from all qualified providers who offer them. We strongly agree that patients should have access to providers for all types of care they require, including mental health and SUD treatments. Promulgation of a regulation on provider nondiscrimination is essential to ending the discrimination many of our members face by private health insurers, based solely on their licensure. This type of discrimination decreases access to care and increases healthcare costs for patients.



Inclusion of stakeholder thoughts on how a provider nondiscrimination rule will help increase access to mental health and SUD is a positive step in the right direction. We implore you to promulgate meaningful rulemaking on section 2706(a) of the Public Health Service Act as soon as possible to help increase access to these needed services. The agencies have missed numerous deadlines to issue this rule, most recently, the August 2023 deadline that was published in the Spring 2023 Unified Agenda of Regulatory and Deregulatory Actions. The need for prompt rulemaking is critical because many private health insurers continue to discriminate against health care providers based on their licensure. We are deeply concerned that it is now almost two years past the January 1, 2022 statutory deadline for rulemaking stated in the *No Surprises Act* as part of the *Consolidated Appropriations Act of 2021*. Without an enforceable rule, many non-MD/DO providers face undue barriers to providing care based on discriminatory policies from insurers.

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. 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 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.
- Insurers are changing policies to bundle services in preparation for moving away from fee-for-service. However, rather than creating a combined fee, they are simply eliminating one fee and paying for the other. This is not in keeping with the calculation of relative values. In other words, chiropractic manipulative treatment may be bundled with manual therapy and providers have been notified that no reimbursement will be made for manual therapy whatsoever when these services are performed together, regardless of the modifier used. These limitations are not applied to other provider types.
- 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.



- 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.

Non-MD/DO providers 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. The mental health and SUD care provided by our members is critical to so many populations across the country. We urge your departments to promulgate a strong and enforceable provider nondiscrimination rule that protects the needs of patients and consumers and enables these providers 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-MD/DO providers who are working within their scope of practice to provide lifesaving health and mental health care. 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.

If our coalition, or any of our member organizations can be of assistance, please don't hesitate to contact the PARCA Chair, Matthew Thackston at mthackston@aana.com or (202) 484-8400. We look forward to continuing our dialogue on this important issue.

Sincerely,

American Academy of PAs

American Association of Nurse Anesthesiology

American Association of Nurse Practitioners

American Association for Marriage and Family Therapy

American Chiropractic Association

American College of Nurse-Midwives

American Nurses Association

American Optometric Association

National Association of Pediatric Nurse Practitioners

National Association of Social Workers

National League for Nursing

