

April 3, 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, Yellen and Acting Secretary Su:

On behalf of the undersigned organizations representing Advanced Practice Registered Nurses (APRNs) and advanced practice nursing education, we are writing to you today to express our to urge you to promulgate meaningful rulemaking on section 2706(a) of the Public Health Service Act no later than the Administration's May 2023 deadline that was published in the Fall 2022 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 over a year 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 APRN providers face undue barriers to providing care, based on discriminatory policies from insurers.

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.

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 making enforcement of this law difficult. 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."

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. We wanted to send new examples of discriminatory reimbursement policies our members currently face including:

- Cigna recently announced their intention to decrease 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”.
- 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.
- 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.”
- Cigna will not cover Family Nurse Practitioners in the mental health setting.

- In Oklahoma, Cigna does not accept NPI numbers for nurse practitioners and will not directly reimburse for their services. Instead, their services must be billed under the supervising physician's NPI number.
- 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.

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 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 Academy of Nursing

American Association of Colleges of Nursing

American Association of Nurse Anesthesiologists

American Nurses Association

National Association of Clinical Nurse Specialists

National Association of Pediatric Nurse Practitioners

National League for Nursing

National Association of Nurse Practitioners in Women's Health