



March 10, 2022

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 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 undersigned organizations representing the Patient Access to Responsible Care Alliance (PARCA), we are writing to you today to thank your departments for hosting a listening session on the issue of provider nondiscrimination. We were pleased to see the majority of groups at the listening session speaking out in favor of a strong and enforceable provider nondiscrimination rule that would honor the original intent of the *Patient Protection and Affordable Care Act*, as well as the *No Surprises Act*. In light of this we believe it's important to clarify a few issues that were raised during the listening session.

As member organizations of PARCA, we represent non-MD/DO Medicare recognized health and mental health 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, certification, and experience to increase patient access to care and competition, lower costs and maintain quality and safety. Collectively, PARCA member organizations represent over 4 million providers throughout the nation, with expertise in a wide variety of areas.

According to the Public Health Service 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 section shall not require that a group health plan or health insurance issuer contract with any health care provider willing to abide by the terms and conditions for participation established by the plan or issuer. Nothing in this section shall be construed as preventing a group health plan, a



health insurance issuer, or the Secretary from establishing varying reimbursement rates based on quality or performance measures.”

Several of the insurers at the listening session said they believe the current system is working just fine. However, our members have examples of discrimination based on licensure that this provision explicitly prohibits. Provider discrimination continues to occur because of the lack of promulgated rules and no enforcement mechanism. The organizations we represent, and the millions of providers that make up our memberships have continued to face discrimination from insurers because of their 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 Arkansas only reimburses nurse practitioners 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.
- Doctor of Optometry in several states are required to be credentialed with a vision plan in order to be on the panel of a health insurance company. Other provider types who also provide eye health and vision care do not have the same requirement to be credentialed with the vision plan in order to be on the panel of the health insurance company. One insurance company, Aetna, has noted that lack of non-discrimination regulations allows them to continue this practice.
- Select Health commercial reimbursement schedule (Idaho) pays Doctor of Optometry at 85% of the rate for MDs. By email, the plan representative explains “they are following market practices for optometrists in terms of pricing.”
- Payers are changing policies to bundle services in preparation for moving away from fee for service, however, rather than create a combined fee, they simply eliminate one fee and pay 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.
- Recently, podiatric physicians in Kentucky requests for prior authorization of hammertoe surgery were denied under a Fortune 500 company’s group health plan, which has a policy to only cover the procedure when furnished by an MD or DO. Another fortune 500 company’s group health plan imposes a dollar limit on coverage of services furnished by podiatrists that is not imposed on MDs or DOs. As a practical matter, the



limit is so low that it effectively excludes surgical procedures by podiatrists, particularly if they have billed for conservative care prior to recommending surgery.

We know that some insurers have also questioned your agencies standing to enforce a provider nondiscrimination rule, Congress has been clear in its intent that your agencies should be promulgating a rule on provider nondiscrimination. On October 5, 2021, eight Senators from the committees of jurisdiction over the *No Surprise Act* sent a letter to your agencies outlining their legislative intent, including a call for a robust enforcement mechanism. Similarly, in June of 2021 eight Representatives also serving on Committees of jurisdiction sent a letter stating that their intent was for your agencies to promulgate rules that would allow for proper enforcement of the provision.

We continue to support a strong rule that will ensure access to care for all Americans, including the millions of rural and underserved populations. Crafting a strong and enforceable provider nondiscrimination rule is a critical element to ensuring that patients have access to care from the provider of their choice. While we acknowledge that the statute does not require insurers to contract with any willing provider, it does clearly state that insurers cannot base reimbursement decision around a provider licensure if that provider is working within their scope of practice. Decisions on alternate reimbursement levels should be based solely on outcomes and performance related metrics, as outlined in the statute.

As always, we appreciate the work your agencies are doing on this important matter, to help bolster the *Affordable Care Act* and patient access to care. If our coalition, or any of our member organizations can be help, please don't hesitate to contact the PARCA Chair, Matthew Thackston at [mthackston@ana.com](mailto:mthackston@ana.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 Chiropractic Association  
American College of Nurse-Midwives  
American Nurses Association  
American Optometric Association  
American Podiatric Medical Association  
National Association of Pediatric Nurse Practitioners  
National Association of Social Workers  
National League of Nursing