



June 1, 2021

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 congratulate you all on your recent appointments, and to bring your attention to the urgent issue of provider nondiscrimination. H.R. 133, *The Consolidated Appropriations Act of 2021* included the *No Surprises Act*, which contained Section 108 on implementing protections against provider discrimination. This section requires your agencies to execute the provider nondiscrimination protections that were originally included under Section 2706(a) of the Public Health Service Act as implemented by Section 1201 of the *Patient Protection and Affordable Care Act (ACA)* which prohibits private health plans from discriminating against qualified licensed healthcare professionals based on their licensure. However, this provider nondiscrimination provision, which many of our organizations supported, was never implemented through a regulation. Our organizations are writing to ask you to promulgate rules on provider nondiscrimination in a way that protects patient access to care and promotes competition.

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 as a way to increase access 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.



As organizations representing non-MD/DO Medicare recognized healthcare providers, our members in particular have been affected by the lack of enforcement of provider nondiscrimination rules. Health plans and insurers have on occasion refused to negotiate in good faith with our members, refused to allow our members in network, refused to contract with our members, have reimbursed our members unequally to our MD/DO colleagues and have added unnecessary requirements and difficulties for our members that other providers do not face. While these actions directly harm the provider, they also decrease patient access to care, limit competition and increase costs for consumers.

Non-MD/DO healthcare providers, acting within the scope of their license under applicable state law or regulation, should not face discrimination from payors that ultimately hurts patients. Because no enforceable regulation has been issued since the passage of the *ACA*, there is no mechanism in place to enforce this important provision. Congress sought to ensure that these protections are now enforced with the inclusion of Section 108 in H.R. 133. We believe that your agencies should promulgate a robust provider nondiscrimination rule that is in the best interests of consumers through promoting access to healthcare, consumer, and patient choice of safe and high-quality healthcare, reducing healthcare costs through competition, and allowing providers to practice to the full extent of their education, training, and licensure. The rules should take into account several critical considerations:

- Rulemaking should prevent health insurers, health plans, and payors from establishing varying reimbursement rates and varying reimbursement requirements for the same or similar covered services for all types of providers based solely on their respective state licensure. Equitable reimbursement for providers is a necessary step to expanding access to care. Rulemaking should ensure that health plans, health insurers and other payors are not engaging in prohibited contracting practices which discriminate with respect to participation under the plan or coverage based on licensure. While this section does not require health plans to accept any willing provider, this section prohibits them from discriminating based on licensure. Health plans, health insurers and other payors should also not be allowed to remove a provider from the network based solely on their licensure.
- Rulemaking should prohibit health plan issuers from including a stipulation or requirement for supervision or collaboration, or completion of an additional certification or training program, on a particular provider beyond state licensing requirements and any similar or correlating requirements placed on participating MD/DO physicians in order to credential that provider in their health plan network.
- Rulemaking should prohibit a health plan, health insurer, or payor from setting up arbitrary networking rules setting up geographic location limits for its network. Such restrictions can include only allowing on panels a certain class of provider within a given



specialty in a geographic region. Another restriction could be only allowing a specific provider type to participate in a shortage area yet restricting that provider type in its network in areas outside of the shortage area.

- Rulemaking should require that value-based payment arrangements not be allowed to discriminate against an entire class of provider based on their licensure.
- To ensure compliance, rulemaking should include a means to audit health plans, health insurers, and payors for compliance with the provider nondiscrimination provision.
- This rulemaking should only apply to licensed providers with the authorization to bill insurance plans.
- The rulemaking should provide for a monetary penalty for non-compliance with this provision as a way to ensure that payors are staying compliant.

The members of PARCA represent not only many of the non-MD/DO Medicare recognized healthcare and mental health providers who are often discriminated against by insurers, but the providers of choice for many patients, especially in rural and underserved areas, who are adversely affected by lack of access to care. We are urging your departments to promulgate a strong and enforceable provider nondiscrimination rule that protects the needs of patients and consumers.

The members of PARCA hope to be constructive partners in this effort and request a meeting with you and/or your staffs to further discuss this issue. You can reach out to Matthew Thackston, Chair of the PARCA Coalition at mthackston@aana.com or at (202) 741-9081. Thank you for your consideration, we look forward to hearing from you.

Sincerely,

American Academy of PAs
American Association of Nurse Anesthetists
American Association of Nurse Practitioners
American Chiropractic Association
American College of Nurse-Midwives
American Nurses Association
American Optometric Association
American Psychological Association
American Speech-Language-Hearing Association
National Association of Pediatric Nurse Practitioners
National Association of Social Workers
National League of Nursing