



April 4, 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 Avenue, 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 today to urge you to promulgate 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 this rulemaking is critical, as insurers continue to discriminate against health care providers based on licensure to the detriment of patients and their ability to access care, and in violation of the nondiscrimination provisions. We are concerned that it is now over a year past the statutory deadline for rulemaking provided in the *No Surprises Act* as part of the *Consolidated Appropriations Act of 2021*, and the agencies have missed several self-imposed deadlines after the initial statutory deadline.

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 4 million providers throughout the nation, with expertise in a wide variety of patient care areas. Therefore, it is critical that the agencies promulgate enforceable rules pursuant to statutory requirements.

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."



While this provision, which is critical to patient access, choice, and competition within the healthcare marketplace, was originally included in the *Patient Protection and Affordable Care Act* in 2010, there has never been promulgation of a rule. Recognizing the need for an enforceable rule implementing this provision, Congress passed the *Consolidated Appropriations Act of 2021*, which set a statutory deadline of January 1, 2022 for the Administration to begin rulemaking, with a final rule due no later than August 2022. Despite the clear intent of this language and multiple Congressional letters calling for a strong rule implementing these protections, the agencies have not yet acted.

Without an enforceable rule, many non-MD/DO providers continue to face undue barriers to providing care, based on discriminatory policies from insurers. Included below are specific examples which negatively impact patients and providers.

- Cigna recently announced its 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.
- Blue Cross Blue Shield of Arkansas only reimburses physician assistants (PAs) and nurse practitioners (NPs) for services for patients with presenting problems of low to moderate severity. This restricts PAs and 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 a lack of nondiscrimination regulations allows it to continue this practice.
- Anthem Blue Cross in California offered a lower rate to CRNAs who are licensed to provide anesthesia care in California independently. Anthem described its reasoning by stating that it was basing this decision on CRNAs licensure saying, “[Anthem] believes it is in compliance with the law in paying mid-level providers less than physicians.”
- Select Health’s commercial reimbursement schedule (Idaho) pays Doctor of Optometry at 85% of the rate for MDs. The plan representative explained by email “[Select Health is] following market practices for optometrists in terms of pricing.”
- 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.

- CGS, via Medicare Part B, is denying payment to podiatric physicians for remote physiologic monitoring (RPM) even though the parameters clearly fall within the podiatric physician's scope of practice. CGS states that RPM performed by a podiatric physician is considered investigational and experimental.
- BCBS of Alabama (BCBSAL) is not reimbursing podiatric physicians for ankle services within the scope of the DPM's licensure in FL, which is where BCBSAL members are allowed to see network providers and obtain services in Florida. The ankle surgeries in question are covered benefits under the members' benefit plans and are reimbursed, but only if provided by MDs or DOs.
- DME MACs' LCA requirements for therapeutic shoes for patients with diabetes (TSD) maintain that the documentation of Medical Necessity, completed by the podiatric physician, be signed by the MD/DO managing the diabetes despite the fact that podiatric physicians are licensed to perform that exam, find that the patient has a qualifying condition, and determine the need for shoes/inserts.
- Highmark Pennsylvania capped the allowed daily amount of occupational therapy services at \$72 compared to \$92 for other therapy providers utilizing the same billing codes. This issue was corrected after the company was reminded of section 2706, but clear, direct guidance from HHS would prevent these types of policies from ever being adopted.

On behalf of our providers and their patients, we strongly urge your agencies to uphold the Administration's May 2023 deadline for promulgation of a strong, enforceable, provider nondiscrimination rule that honors Congressional intent and protects patient access to care. As always, we appreciate the work your agencies are doing on this important matter to ensure patient access to the providers of their choice. 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 Chiropractic Association
American College of Nurse-Midwives
American Nurses Association
American Occupational Therapy Association
American Optometric Association



American Physical Therapy Association
American Podiatric Medical Association
American Speech-Language-Hearing Association
National Association of Pediatric Nurse Practitioners
National League of Nursing