

December 18, 2015

Andrew M. Slavitt  
Acting Administrator  
Centers for Medicare & Medicaid Services  
Department of Health and Human Services  
Attn: CMS-9937-P  
P.O. Box 8016  
7500 Security Boulevard  
Baltimore, MD 21244-8016

**RE: CMS-9937-P – Patient Protection and Affordable Care Act; HHS Notice of Benefit and Payment Parameters for 2017 – Proposed Rule (80 Fed.Reg. 75488 December 2, 2015)**

Dear Mr. Slavitt:

On behalf of the undersigned organizations, we are pleased to provide comments on CMS-9937-P – Patient Protection and Affordable Care Act; HHS Notice of Benefit and Payment Parameters for 2017 – Proposed Rule (80 Fed.Reg. 75488 December 2, 2015).

Advance Practice Registered Nurses (APRNs) include Nurse Practitioners (NPs), Certified Registered Nurse Anesthetists (CRNAs), Certified Nurse-Midwives (CNMs), and Clinical Nurse Specialists (CNSs). APRNs play a significant role in ensuring patient access to high quality healthcare that is cost-effective. We thank the agency for the opportunity to comment on this proposed rule.

**Require APRNs to be Included in Qualified Health Plans Participating in Federally Facilitated Marketplaces**

We support the agency's requirement that qualified health plans participating in federally facilitated marketplaces (FFMs) must maintain networks that are sufficient in numbers and types of providers to assure that all services to covered persons will be accessible to them without unreasonable delay. We also support the agency's declaration that it will consider the National

Association of Insurance Commissioner's (NAIC) final recommendations of updates to their Network Adequacy Model law as it assesses these policies. We believe that patients benefit the greatest from a healthcare system where they receive easily accessible care from an appropriate choice of safe, high quality and cost-effective providers, such as APRNs. Therefore, we request that APRNs be included in all health carrier network plans, which will help ensure network adequacy, access and affordability to consumers. Doing so would help establish appropriate minimum standards for ensuring sufficient choice of providers within health carrier networks.

The APRN community notes that nonphysician providers, such as APRNs, are an important type of provider with an integral role in providing safe and high quality care in the health care marketplace. Failure to make the best use of APRNs by protecting unnecessary and costly barriers to their services denies patient access to quality care, limits healthcare improvement, and wastes taxpayer and private resources. Without strong patient access safeguards in place, we are concerned that lax network adequacy standards could limit the number of providers or the types of providers on their panels, which could severely limit patient access to needed care. Consistent with the goals and policies of the Affordable Care Act in establishing provider networks that ensure extensive access to care, we encourage health carriers to include APRNs in their networks by expressly recognizing APRNs as eligible professionals in health plans networks. This would help ensure patient access to a range of beneficial, safe and cost-efficient healthcare professionals and allow APRNs to practice to full extent of their scope of practice.

Such a recommendation is consistent with the findings in the Institute of Medicine's (IOM) report, *The Future of Nursing: Leading Change, Advancing Health*. The report's first recommendation is for Registered Nurses (RNs) and APRNs to practice to the fullest scope of their education and training, and its third recommendation is to expand opportunities for RNs and APRNs to develop and exercise leadership in redesigning healthcare in the United States.<sup>1</sup> The IOM recommends that policymakers eliminate barriers to the fullest and best use of RNs and APRNs, not only so that they can practice to the fullest extent of their license but also to provide

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<sup>1</sup> Institute of Medicine. (2010), *The future of nursing: Leading change, advancing health*, available at [http://books.nap.edu/openbook.php?record\\_id=12956&page=R1](http://books.nap.edu/openbook.php?record_id=12956&page=R1). Report recommendations in summary at <http://www.iom.edu/~media/Files/Report%20Files/2010/The-Future-of-Nursing/Future%20of%20Nursing%202010%20Recommendations.pdf>.

for the growing number of Medicare beneficiaries and other patients' access to high quality, cost-effective care. Eliminating these barriers is a crucial imperative at every level of healthcare policy from Congress and the Administration, to states, to healthcare facilities and private enterprise, and in every part of our country, particularly rural and medically underserved America that rely heavily on APRN care.

### **Qualified Health Plans Participating in FFMs Must Not Discriminate Against Providers Acting Within their State Scope of Practice Laws and Regulations**

We recommend that qualified health plans design their network participating provider selection criteria to *not* discriminate against qualified licensed healthcare providers acting within their state scope of practice laws and regulations. This request aligns with the same recommendation contained in the final NAIC Health Benefit Plan Network, Access and Adequacy Model Act, released in November 2015, which makes the same statements.<sup>2</sup>

It is important to highlight the harms of discrimination APRNs currently face in the selection criteria certain health plans develop which determines the selection of providers that participate in their networks. APRNs, acting within the scope of their license or certification under applicable state law or regulation, have experienced discrimination with respect to participation in qualified health plans. Such discrimination impairs consumer choice and competition and thus impairs efforts to control healthcare cost growth. Further, this discrimination violates the federal provider nondiscrimination provision in the Patient Protection and Affordable Care Act (Sec. 1201, Subpart 1, creating a new Public Health Service Act Sec. 2706(a), "Non-Discrimination in Health Care, 42 USC §300gg-5)<sup>3</sup>. As the agency is aware, the federal non-discrimination

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<sup>2</sup> National Association of Insurance Commissioners Final Health Benefit Plan Network, Access and Adequacy Model Act (November 2015), [http://www.naic.org/documents/committees\\_b\\_exposure\\_draft\\_proposed\\_revisions\\_mcpnama74.pdf](http://www.naic.org/documents/committees_b_exposure_draft_proposed_revisions_mcpnama74.pdf)

<sup>3</sup> Patient Protection and Affordable Care Act, Sec. 1201, Subpart 1, creating a new Public Health Service Act Sec. 2706(a), Non-Discrimination in Healthcare (42 U.S.C. §.300gg-5). The statutory provision reads as follows: "(a) Providers.--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 healthcare

provision indicates that “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.”

Section 2706 is an important law because it promotes competition, consumer choice and high quality healthcare by prohibiting discrimination based on provider licensure that keeps patients from getting the care they need. To promote patient access to high quality healthcare, market competition and cost efficiency, qualified health plans participating in health insurance exchanges or marketplaces must all avoid discrimination against qualified, licensed healthcare professionals, such as APRNs, solely on the basis of licensure. Proper implementation of the provider nondiscrimination provision is crucial because health plans have wide latitude to determine the quantity, type, and geographic location of healthcare professionals they include in their networks, based on the needs their enrollees. However, when health plans organize their healthcare delivery in such a way that they discriminate against whole classes of qualified licensed healthcare professionals by licensure, such as APRNs, patient access to care is impaired, consumer choice suffers, and healthcare costs climb for lack of competition.

Ensuring that qualified health plans adhere to this nondiscrimination law would promote patient access to a range of beneficial, safe and cost-efficient healthcare professionals, consistent with public interests in quality, access and cost-effectiveness. These priorities correspond with the principles advocated by the APRN community, which are to provide safe, high-quality and cost effective anesthesia care for patients.

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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 healthcare 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.”

We thank you for the opportunity to comment on this proposed rule. Should you have any questions regarding these matters, please feel free to contact the AANA Senior Director of Federal Government Affairs, Frank Purcell, at 202.484.8400, [fpurcell@aanadc.com](mailto:fpurcell@aanadc.com).

Sincerely,

American Association of Colleges of Nursing, AACN  
American Association of Nurse Anesthetists, AANA  
American Association of Nurse Practitioners, AANP  
American College of Nurse-Midwives, ACNM  
American Nurses Association, ANA  
Gerontological Advance Practice Nurses Association  
National Association of Nurse Practitioners in Women's Health  
(NPWH)  
National Association of Pediatric Nurse Practitioners, NAPNAP  
National League for Nursing, NLN