



November 18, 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 express our strong concern about the lack of rulemaking on section 2706(a) of the Public Health Service Act. While we appreciate that your agencies conducted a listening session earlier this year, the rulemaking is now ten months past the statutory deadline set forth in the *No Surprises Act* and several self-imposed additional deadlines for rulemaking this year. We strongly request your agencies to conduct rulemaking in a swift manner to ensure that patients have access to the care they deserve from the provider of their choice.

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.”

Our organizations have highlighted multiple issues surrounding this provision stemming from the lack of official rulemaking and enforcement. Without proper rulemaking and enforcement, insurers will continue to be able to unfairly lower reimbursement, exclude, and add additional barriers to non-MD/DO healthcare providers, decreasing competition and limiting access to care, especially in rural and underserved areas. Additionally, Congress passed the *No Surprises Act* (P.L. 116-260), which included a January 2022 deadline for rulemaking. Members of both the House and the Senate have also sent multiple letters to your agencies laying out the need for rulemaking on this provision, as well as providing a framework for the Congressional intent on what the rulemaking should include. As you are aware, this provision was included in the *No Surprises Act* specifically because the agencies did not conduct rulemaking when section 2706(a) was included in the *Affordable Care Act* and signed into law in 2010.

We stand with lawmakers in supporting a strong rule that will ensure access to care for all Americans, including the millions of rural and underserved patients. We urge you to quickly develop a strong and enforceable provider nondiscrimination rule to ensure that patients have access to care from the provider of their choice. As always, we appreciate the work your agencies are doing on this important matter, to 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@aana.com or (202) 484-8400. We look forward to continuing our dialogue on this important issue.

Sincerely,

American Academy of Audiology
American Academy of PAs
American Association of Nurse Anesthesiology
American Association of Nurse Practitioners
American College of Nurse-Midwives
American Chiropractic Association
American Nurses Association
American Optometric Association
American Podiatric Medical Association
American Psychological Association Services, Inc.
American Speech-Language-Hearing Association
National Association of Pediatric Nurse Practitioners
National Association of Social Workers
National League for Nursing