

January 17, 2020

Seema Verma, Administrator  
Centers for Medicare and Medicaid Services  
200 Independence Avenue S.W.  
Washington, DC 20201

Submitted Electronically: PatientsOverPaperwork@cms.hhs.gov

Dear Administrator Verma:

On behalf of the American Nurses Association (ANA), I am writing in response to your December 26, 2019, request for feedback concerning the President's Executive Order (EO) #13890 on Protecting and Improving Medicare for Our Nation's Seniors. We strongly support the Administration's efforts to expand access to care for Medicare beneficiaries by leveraging the knowledge, education, and clinical experience of advanced practice registered nurses (APRNs). We urge the Center for Medicare and Medicaid Services (CMS) to implement Section 5 of the EO to the fullest extent possible. ANA remains committed to the recommendations put forth in the EO, which would enhance APRN practice and patient care in Medicare while reducing paperwork burden on providers.

As you know, Section 5 calls for proposed regulations in 2020 to "eliminate burdensome regulatory billing requirements, conditions of participation, supervision requirements, benefit definitions, and all other licensure requirements of the Medicare program that are more stringent than applicable Federal or State laws require and that limit professionals from practicing at the top of their profession." As the EO recognizes, Medicare payment rules subject APRNs to a variety of practice restrictions even when state laws do not impose such rules. **We fully support the EO's intent to eliminate these restrictions, in order to improve patient satisfaction and health outcomes by enabling APRN's to spend more time with patients.**<sup>1</sup> ANA stands ready to assist the Administration's effort to bring this initiative to fruition.

CMS should remove costly and unnecessary requirements that physicians supervise APRNs. Specific examples of burdensome supervision requirements preventing APRNs from practicing to the top of their license include:

- 42 C.F.R. § 482.52 -- Condition of participation: Anesthesia services;
- 42 C.F.R. § 416.42(b)(2) -- Conditions of Coverage: Surgical Services;
- 42 C.F.R. § 485.639 -- Conditions of Participation: Surgical Services;

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<sup>1</sup> See Letter from ANA to HHS and CMS. October 31, 2019. Accessible at:

<https://www.nursingworld.org/~4ab2df/globalassets/docs/ana/ana-letter-to-hhs-re-medicare-executive-order-2019-10-31.pdf>

Letter from ANA to CMS. September 24, 2019. Accessible at:

<https://www.nursingworld.org/~4a970b/globalassets/docs/ana/comment-letters/ana-comment-letter-to-cms-2019-09-25.pdf>;

Letter from Nine Nursing Organizations to CMS. August 12, 2019. Accessible at:

<https://www.nursingworld.org/~4a3471/globalassets/docs/ana/comment-letters/aprn-comment-rfi-reducing-administrative-burden---final.pdf>

- 42 C.F.R. § 482.12(c)(1)(i), (c)(2), (c)(3), (c)(4)--Condition of participation: Governing body;
- 42 C.F.R. § 482.22(b)(3), (c)(5)(i)--Condition of participation: Medical staff; and
- 42 C.F.R. § 482.1(a)(5) Basis and Scope.
- 42 C.F.R. § 482.22(b)(3), (c)(5)(i) Condition of participation: Medical Staff; and
- 42 C.F.R. §485.631.

We also urge CMS to eliminate unnecessary credentialing and privileging requirements that impair patient access to APRN services. These requirements prevent APRNs from delivering essential services that otherwise permitted under state law. Examples of credentialing and privileging requirements include:

- 42 C.F.R. § 482.22 Condition of participation: Medical staff; and
- 42 C.F.R. § 482.1(a)(5) Basis and Scope.

Federal restrictions on APRN practice result in systemic consequences for care delivery and innovation. We applaud CMS for using its waiver authority to allow nurse practitioners (NPs) in the state of Maryland to certify their patients' need for Medicare home health services and encourage you to take similar action wherever current rules restrict care and innovation unnecessarily. In another example of innovation, the Oncology Care Model (OCM) allows for \$160 per beneficiary per month that can be used to support care coordination activities that are not subject to Medicare's supervision rules. In addition to investing in care coordination, this important initiative serves to expedite expanded access to needed care, while also creating new opportunities to evaluate the critical contributions of APRNs across emerging Medicare and all-payer care models. **We encourage the Innovation Center to review nationwide models currently in demonstration or under development, in order to identify and eliminate similar barriers to care.**

Finally, Medicare's "incident-to" billing rules further constrain APRN participation in the program, at a time when APRNs are increasingly providing primary care.<sup>2</sup> The Medicare Payment Advisory Commission (MedPAC) has recommended eliminating incident-to billing, and ANA has joined other nursing groups asking CMS to support this recommendation. **We again urge CMS to engage meaningfully with federal policymakers to enact appropriate Medicare reforms on incident-to billing. A first step would be leveraging the CMS budgeting process to explore how this change would be implemented.**

Similarly, we recognize that changes to the Medicare statute may be necessary to remove all barriers to APRN practice in Medicare. ANA stands ready to advocate for such legislation, for instance in supporting a comprehensive bill that could be introduced to eliminate specific practice restrictions in payment policy. **ANA urges CMS to pursue collaborative approaches with Congress, as well as regulatory solutions, in order to effectuate fully the intent of the EO.**

ANA is the premier organization representing the interests of the nation's 4.0 million RNs, through its state and constituent member associations, organizational affiliates, and individual members. ANA members also include the four APRN roles: NPs, clinical nurse specialists (CNSs), certified nurse-

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<sup>2</sup> Medicare Payment Advisory Commission. (2019). Report to the Congress: Medicare and the Health Care Delivery System. 128. [http://medpac.gov/docs/default-source/reports/jun19\\_medpac\\_reporttocongress\\_sec.pdf?sfvrsn=0](http://medpac.gov/docs/default-source/reports/jun19_medpac_reporttocongress_sec.pdf?sfvrsn=0).

midwives (CNMs) and certified registered nurse anesthetists (CRNAs).<sup>3</sup> ANA is dedicated to partnering with health care consumers and payers to improve practices, policies, delivery models, outcomes, and access across the health care continuum.

We look forward to following up with your staff and appropriate agency staff about these concerns. If you have any questions, please contact Brooke Trainum, Assistant Director, Policy and Regulatory Advocacy, at 301.628.5027 or [brooke.trainum@ana.org](mailto:brooke.trainum@ana.org).

Sincerely,



Ernest Grant, PhD, RN, FAAN  
President

cc: Debbie Hatmaker, PhD, RN, FAAN, Acting CEO and Chief Nursing Officer

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<sup>3</sup> The Consensus Model for APRN Regulation defines four APRN roles: certified nurse practitioner, clinical nurse specialist, certified nurse-midwife and certified registered nurse anesthetist. In addition to defining the four roles, the Consensus Model describes the APRN regulatory model, identifies the titles to be used, defines specialty, describes the emergence of new roles and population foci, and presents strategies for implementation.