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April 16, 2012

Honorable Mary K. Wakefield, PhD, RN
Administrator, Health Resources and Services Administration
Department of Health and Human Services
Attention: HRSA Regulations Officer
Parklawn Building Rm 14-101
5600 Fishers Lane
Rockville, MD 20857

Submitted electronically to <http://www.regulations.gov>

Re: **National Practitioner Data Bank: Notice of Proposed Rulemaking**
77 Fed.Reg. 9138 (February 15, 2012); RIN 0906-AA87

Dear Administrator Wakefield,

The American Nurses Association (ANA) welcomes the opportunity to offer comments on this proposed rule. The ANA is the only full-service professional organization representing the interests of the nation's 3.1 million registered nurses (RN), the single largest group of health care professionals in the United States. We represent RNs in all roles and practice settings, through our state and constituent member nurses associations, and organizational affiliates. ANA advances the nursing profession by fostering high standards of nursing practice, promoting the rights of nurses in the workplace, projecting a positive and realistic view of nursing, and advocating before Congress and regulatory agencies on health care issues affecting nurses and the public. Our members include Advanced Practice Registered Nurses (APRNs) such as Nurse Practitioners (NPs), Clinical Nurse Specialists (CNSs), Certified Nurse Midwives (CNMs), and Certified Registered Nurse Anesthetists (CRNAs).

ANA has been an active member of the National Practitioner Data Bank (NPDB) Executive Committee and appreciates the commitment of the Health Resources and Services Administration (HRSA) to engaging stakeholders. With implementation of Section 1921 of the Social Security Act and its successive amendments, requiring States to report adverse licensure actions and negative licensing issues for health care practitioners, we have been particularly concerned that registered nurses be aware of the NPDB and appreciate and comprehend its functions. ANA commends HRSA staff for responding to ANA's request to provide a Fact Sheet specifically designed for the RN audience.

The proposed regulations meet the goal of Section 6403 of the Affordable Care Act: to eliminate duplicative data reporting and access requirements between the NPDB and the Healthcare Integrity and Protection Data Bank (HIPDB), and to streamline Data Bank operations. The ANA fully supports that goal and, in general, we support the proposed regulations. We offer comments on one section that particularly affects APRNs, and suggest additional regulatory language.

Section 60.12 Reporting adverse actions taken against clinical privileges

In the notice of proposed rulemaking (NPRM), HRSA notes that “a hallmark of any valid adjudicated action or decision is the availability of due process mechanism.”¹ We are in complete agreement on this crucial point. However, we would like to take this opportunity to bring to the agency’s attention the unfortunate reality that due process mechanisms are not always available to APRNs. Consequently, we believe it is essential that the final regulations include a requirement that ensures that APRNs – and all health care practitioners -- are afforded equal due process rights and procedures, equivalent to those afforded physicians.

ANA and the professional nursing associations that represent subspecialties of APRNs, particularly NPs and CNMs, are aware that, in some communities, there is substantial pressure from organized medicine and some members of the medical staff to limit and constrict access to hospital privileges for providers other than medical doctors (MDs) and doctors of osteopathy (DOs). In certain institutions, APRNs are granted hospital privileges, but those privileges are much narrower than the scope of practice for which the APRN is licensed. Or there are restrictions or requirements (i.e. physician supervision) which contradict the APRN’s ability to practice autonomously, as set by state scope of practice and licensure laws, regulations, and policies.

The Institute of Medicine Committee on the Future of Nursing noted how these restrictive practices can pose a barrier to APRN practice in its report, *Future of Nursing: Leading Change, Advancing Health*. In Recommendation 1, “Remove scope-of-practice barriers,” the IOM committee emphasized that “*Advanced practice registered nurses should be able to practice to the full extent of their education and training.*” The committee specifically recommended that the Centers for Medicare and Medicaid Services take the following action, to address inequities in clinical and admitting privileges:

- Amend or clarify the requirements for hospital participation in the Medicare program to **ensure that advanced practice registered nurses are eligible for clinical privileges, admitting privileges, and membership on medical staff.**²

Furthermore, the AARP Public Policy Institute has issued a report, “Removing Barriers to Advanced Practice Registered Nurse Care: Hospital Privileges,” that discusses barriers to hospital privileges and outlines the benefits to consumers and the health care system when APRNs have hospital privileges. The report notes that “Hospital privileges for APRNs may decrease readmission rates and errors, speed recovery, and improve health for consumers.”³ In addressing the fact that hospitals may privilege APRNs “as less than active medical staff and without medical staff membership,” AARP also notes that “Without voice and vote, APRNs can be voted off medical staff rosters individually and categorically *without recourse* (emphasis added).”

Because each hospital or hospital system has its own unique set of by-laws and medical staff policies and procedures -- and because of the relatively small number of APRNs who are subject to an action regarding clinical privileges -- it is seemingly impossible to know precisely how many APRNs are affected by this lack of due process. However, in an attempt to gauge the

¹ 77 Fed. Reg. at 9144

² <http://www.iom.edu/Reports/2010/The-Future-of-Nursing-Leading-Change-Advancing-Health.aspx>

³ <http://championnursing.org/resources/APRN-hospital-privileges-brassard-2011>

prevalence of the problem and produce supporting data, the American College of Nurse-Midwives (ACNM) recently surveyed its members to learn more about their experiences in seeking clinical privileges. Of the responding ACNM members who are practicing nurse-midwives and completed the *ACNM Credentialing and Hospital Privileging Survey* between November 30 and December 13, 2011, only 22% responded affirmatively when asked if they had due process rights in application, appointment and dismissal from the staff.⁴

The ACNM survey highlights the extent of the problem, implying that over three-quarters of CNMs – who are delivering babies and providing crucial prenatal and postpartum care – are not afforded the due process rights they clearly deserve. And this is particularly concerning in light of the long history of discriminatory and anti-competitive practices toward APRNs by certain individuals and sectors of organized medicine.

It is well acknowledged that APRNs play a critical role in providing access to underserved populations. APRNs can sometimes be the only healthcare professionals willing or available to provide direct care – including primary care -- for the poorest patients, particularly those on Medicaid, as well as in remote and rural areas. APRNs will play an increasingly important role in the coming years, as a reformed health care system provides access to millions of previously uninsured Americans. Consequently, even a single institution that unfairly limits the clinical privileges afforded to APRNs can trigger a ripple effect that limits access of an entire community to the quality health care that it needs and deserves. This is an issue that warrants the implementation of fair standards for all, in each and every hospital.

In discussing the importance of due process, HRSA notes in the NPRM that “the fact that the subject elects not to use the due process mechanism provided by the authority bringing the action is immaterial, as long as such a process is available to the subject before the adjudicated action or decision is made final,” and that as long as an action or decision follows procedures that ensure due process is available, it would qualify as a reportable action.⁵ HRSA’s emphasis on the importance of the *availability* of due process mechanisms, regardless of their frequency of use, further supports the need to ensure that all hospitals are required to afford due process rights for all relevant types of healthcare providers, not just physicians.

To remedy the inconsistent due process standards available to APRNs and other non-physicians, ANA strongly urges HRSA to include in its final rule and regulations additional language such as the following:

Subpart B—Reporting of Information

* * *

§60.12 Reporting adverse actions taken against clinical privileges.

* * *

(d) Exception. Notwithstanding the foregoing, no adverse action taken against the clinical privileges of any health care practitioner shall be reported unless the health care practitioner received a due process hearing before adverse action was taken.

⁴ *ACNM Credentialing and Hospital Privileging Survey*; American College of Nurse Midwives, unpublished data, 2011.

⁵ 77 Fed. Reg. at 9144.

Conclusion

The American Nurses Association greatly appreciates the efforts of HRSA to eliminate duplication of data reporting by the proposed rule to eliminate the HIPDB and transferring its functions to the NPDB and HIPDB. We believe that streamlining this process will help to dispel confusion and heighten accuracy of reporting. ANA also strongly urges HRSA to take this opportunity to alleviate the potentially deleterious impact of an unconscionable inconsistency in the due process standards available to APRNs and other non-physician providers seeking clinical privileges.

We sincerely appreciate the opportunity to comment on this important rule. If we can be of further assistance, or if you have any questions or comments, please feel free to contact Lisa Summers, CNM, DrPH, ANA Department of Nursing Practice & Policy at Lisa.Summers@ana.org or 301-628-5058.

Sincerely,



Marla J. Weston, PhD, RN
Chief Executive Officer
American Nurses Association

cc: Karen A. Daley, PhD, MPH, RN, FAAN
President
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