January 26, 2023

The Honorable Xavier Becerra
Secretary
Department of Health and Human Services
Hubert H. Humphrey Building, Room 509F
200 Independence Avenue SW
Washington, DC 20201

Submitted electronically to www.regulations.gov

Re: Patient Protection and Affordable Care Act, HHS Notice of Benefit and Payment Parameters for 2024 [CMS—9899—P]

Dear Secretary Becerra:

The American Nurses Association (ANA) appreciates the opportunity to comment on the proposed update to the Notice of Benefit and Payment Parameters for 2024 for qualified health plans (QHPs) offered on the federal and state-based marketplaces. We appreciate the agency's efforts, through this rulemaking, to expand access and make enrollment easier for patients, with a focus on addressing health equity challenges. However, we remain concerned that registered nurses (RNs) and advanced practice registered nurses (APRNs) and their important role in our health care delivery system remain overlooked in plan requirements and payment. As the agency works to finalize the proposed rule, we urge the agency to consider the following:

1) **HHS must ensure that access to APRNs is considered in determining QHP network adequacy to guarantee access to care for patients.**
2) **HHS should explicitly require QHPs to facilitate access to APRNs providing medication-assisted treatment (MAT) services for patients; and**
3) **HHS should work closely with nurses to continue to address health equity barriers and challenges.**

ANA is the premier organization representing the interests of the nation's over 4.4 million registered nurses (RNs), through its state and constituent member associations, organizational affiliates, and individual members. ANA advances the nursing profession by fostering high standards of nursing practice, promoting a safe and ethical work environment, bolstering the health and wellness of nurses, and advocating on health care issues that affect nurses and the public. ANA members also include the four APRN roles: nurse practitioners (NPs), clinical nurse specialists (CNSs), certified nurse-midwives (CNMs), and certified registered nurse anesthetists (CRNAs). RNs serve in multiple direct care, care coordination, and administration leadership roles, across the full spectrum of health care settings. RNs provide and coordinate patient care, educate patients and the public about various physical and behavioral health conditions

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including essential self-care, and provide advice and emotional support to patients and their family members.

1) **HHS must ensure that access to APRNs is considered in determining QHP network adequacy to guarantee access to care for patients.**

ANA remains concerned that network adequacy requirements for the QHPs do not adequately and explicitly ensure access to the critical health care services provided by APRNs. APRNs provide safe and cost-effective care and are often the providers preferred by patients. States with outdated licensing rules unnecessarily restrict APRN practice, and therefore limit patient choice of provider. However, even in states that grant full practice authority for APRNs, patient access can be hampered by inappropriate barriers posed throughout care systems.

Unfortunately, ANA can share numerous accounts from our APRN members with firsthand experience of how plans discriminate against them, and the adverse impacts that discrimination has on patients. Excluding these clinicians from plans has led to delayed care, inaccurate patient follow-up and dissatisfaction. We also know that patients often must pay out of pocket when APRN claims are denied, or they may have to look for another clinician who will be covered. This creates unnecessary barriers to access to care for patients, especially the most vulnerable. Often, a physician may not be available or accessible, especially in rural and underserved areas. Patients are left without meaningful choices, even though APRNs stand ready to provide primary care and other services at the top of their license. ANA believes HHS can do more through QHP oversight to provide the leadership needed to address these situations.

Currently, APRNs and physician assistants can be included as the primary care providers and APRNs specialized in behavioral health care can be included in outpatient clinical behavioral health providers for the essential community provider (ECP) categories subject to time and distance standards as determined in previous rulemaking. However, their inclusion is subject to whether they practice in a defined health care professional shortage area (HPSA).[1] ANA believes this limitation is a disservice to patients across all geographic areas. While we recognize the critical need in rural and underserved areas, access to APRNs for primary and behavioral health care is critical for **all** patients. ANA urges HHS to ensure that APRNs not only meet but are explicitly included as providers to satisfy all ECP standards in QHP networks.

In addition, ANA continues to call on HHS to do more to address restrictions on access to APRN care, through regulatory action and leadership as the largest purchaser of health care in the United States. For instance, HHS must promulgate strong regulations implementing the federal provider nondiscrimination law, enacted by the Affordable Care Act, commonly known as Section 2706. ANA urges the agency to act expeditiously to finalize an enforceable rule that

[1] Centers for Medicare & Medicaid Services. Qualified Health Plan Issuer Application Instructions, Plan Year 2023. Extracted section: Section 1C: Essential Community Providers/Network Adequacy. https://www.qhpcertification.cms.gov/s/Application%20Instructions. Accessed January 2023.

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allows APRNs to practice at the top of their license across all types of plans. Regulations should explicitly bar all forms of discrimination, including contracting, payment, value-based incentives, and unnecessary requirements such as physician supervision and prior authorization.

Ensuring the inclusion of APRNs, allowed to practice at the top of their license, is imperative to addressing barriers to access to care faced by patients purchasing QHPs on the federal and state-based marketplaces. **As such, HHS must ensure APRNs are considered when determining whether a QHP meets network adequacy requirements across all settings and geographic areas.**

2) **HHS must require QHPs to explicitly recognize APRNs providing MAT services for opioid use disorder treatment as part of the essential community provider (ECP) standards.**

ANA understands the importance of increasing access to medication-assisted treatment (MAT) for opioid use disorder (OUD) to increase patients' chances for recovery. ANA supports the agency's proposed provisions that would require mental health and substance use facilities to be included in ECP standards—which does work to increase such access. However, we encourage the agency to be more explicit in holding plans accountable to more fully cover MAT services by listing MAT services, including the appropriate APRNs providing these services, as part of the time and distance standards that QHPs must meet to ensure network adequacy.

Congress has recognized the important role of the nurse in this critical care through legislation authorizing APRNs to obtain waivers allowing them to prescribe buprenorphine, specifically in the Comprehensive Addiction Recovery Act of 2016 (CARA) and Substance Use-Disorder Prevention that Promotes Opioid Recovery and Treatment for Patients and Communities Act (SUPPORT Act) of 2018. The expanded prescribing authority has resulted in an increase in the number of prescriptions for MAT demonstrating an increase in access for patients, especially among Medicaid beneficiaries.[2] More recently, Congress eliminated the need for a waiver to prescribe MAT in the Consolidation Appropriations Act of 2023 to make it easier for clinicians, further underscoring how critical this service is, especially in rural and underserved areas. APRNs who practiced under the MAT waivers demonstrated that they have the skills and expertise to provide these critical recovery services to beneficiaries. QHPs must recognize this and reflect these providers within their benefit coverage and networks. **ANA urges CMS to explicitly require QHPs to recognize the vital role of APRNs in OUD treatment and explicitly include these key providers and services within their networks.**

[2] Medicaid and CHIP Payment and Access Commission. Buprenorphine Prescribing by Nurse Practitioners, Physician Assistants, and Physicians after CARA 2016. November 2019. https://www.macpac.gov/publication/buprenorphine-prescribing-by-nurse-practitioners-physician-assistants-and-physicians-after-cara-2016/. Access January 2023.

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3) **HHS must work closely with nurses to address and overcome health equity barriers and challenges.**

ANA remains focused on the prominent issue of advancing health equity in our nation's health care delivery system. Providing culturally competent care to patients has long been an ethical imperative for the nursing profession. Nurses embrace diversity and engage in culturally competent care, while working to remove unconscious biases to effectively promote meaningful patient outcomes. Ultimately, nurses are key in designing and directing care that appropriately meets the needs of patients, improves access to needed care, promotes positive outcomes, and reduces disparities.

Nurses, in addition to providing quality care to patients, often serve as advocates for their patients and are best positioned to identify factors that could result in inequitable health outcomes. Nurses also typically reflect the people and communities they serve—allowing them to recognize the challenges faced by their patients and ensure that their patients receive culturally competent, equitable health care services. This is especially important as patients navigate their coverage options on the health insurance marketplaces. **ANA encourages HHS to work closely with nurses to identify and address barriers to access and other health inequities within the QHPs offered on the federal and state-based marketplaces.**

ANA appreciates the opportunity to submit these comments and looks forward to continued engagement with HHS. Please contact Tim Nanof, Vice President, Policy and Government Affairs, at (301) 628-5166 or Tim.Nanof@ana.org, with any questions.

Sincerely,

Debbie Hatmaker

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cc: Jennifer Mensik Kennedy, PhD, RN, NEA-BC, FAAN, ANA President
Loressa Cole, DNP, MBA, RN, NEA-BC, FAAN, ANA Chief Executive Officer

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