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Safe and effective  
anesthesia



for every patient.

March 5, 2018

Jeanne Klinefelter Wilson  
Deputy Assistant Secretary for Policy  
Employee Benefits Security Administration, Room N-5655  
U.S. Department of Labor  
200 Constitution Avenue NW  
Washington, DC 20210

**RE: Definition of Employer—Small Business Health Plans RIN 1210–AB85**

Dear Ms. Wilson:

The American Association of Nurse Anesthetists (AANA) welcomes the opportunity to submit comments to the proposal Definition of Employer—Small Business Health Plans RIN 1210–AB85. We are firmly committed to working with the agency and other healthcare stakeholders to help achieve our common goals of promoting choice and competition, increasing access to the highest quality healthcare, reducing regulatory burdens on providers, and making healthcare more affordable for all Americans. The AANA makes the following comments and recommendations:

- I. CRNAs Provide Safe, High Quality and Cost-Effective Healthcare**
- II. Require CRNAs to be Included in Qualified Health Plans Participating in Association Health Plans**
- III. Appropriate Enforcement of the Provider Nondiscrimination Law Promotes Consumer Choice and Market Competition, Advancing Patient Safety Innovations and Cost-Efficiency in the Public Interest**

**I. CRNAs Provide Safe, High Quality and Cost-Effective Healthcare**

The AANA is the professional association for Certified Registered Nurse Anesthetists (CRNAs) and student registered nurse anesthetists (SRNAs). AANA membership includes more than 52,000 CRNAs and SRNAs, representing over 90 percent of the nurse anesthetists in the United States. CRNAs are advanced practice registered nurses (APRNs) who personally administer approximately 43 million anesthetics to patients each year in the United States. Nurse anesthetists have provided anesthesia in

the United States for 150 years, and high-quality, cost-effective CRNA services are in high demand. CRNAs are Medicare Part B providers and since 1989 have billed Medicare directly for 100 percent of the physician fee schedule amount for services.

CRNAs are involved in every aspect of anesthesia services including a pre-anesthesia patient assessment, obtaining informed consent for anesthesia administration, developing a plan for anesthesia administration, administering the anesthetic, monitoring and interpreting the patient's vital signs, and managing the patient throughout the surgery. CRNAs also provide acute, chronic, and interventional pain management services. CRNAs provide anesthesia for a wide variety of surgical cases and in some states are the sole anesthesia providers in nearly 100 percent of rural hospitals, affording these medical facilities obstetrical, surgical, trauma stabilization, and pain management capabilities. Nurse anesthesia predominates in Veterans Hospitals and in the U.S. Armed Services. CRNAs work in every setting in which anesthesia is delivered including hospital surgical suites and obstetrical delivery rooms, ambulatory surgical centers (ASCs), pain management facilities, and the offices of dentists, podiatrists, and all types of specialty surgeons. CRNAs play an essential role in assuring that rural America has access to critical anesthesia services, often serving as the sole anesthesia provider in rural hospitals and affording these facilities the capability to provide many necessary procedures.

Numerous peer reviewed studies have shown that CRNAs are safe, high quality and cost-effective anesthesia professionals who should practice to the full extent of their education and abilities. According to a May/June 2010 study published in the journal *Nursing Economic\$*, CRNAs acting as the sole anesthesia provider are the most cost-effective model for anesthesia delivery, and there is no measurable difference in the quality of care between CRNAs and other anesthesia providers or by anesthesia delivery model.<sup>1</sup> An August 2010 study published in *Health Affairs* showed no differences in patient outcomes when anesthesia services are provided by CRNAs, physicians, or CRNAs supervised by physicians.<sup>2</sup> Researchers studying anesthesia safety found no differences in care between nurse anesthetists and physician anesthesiologists based on an exhaustive analysis of research literature published in the United States and around the world, according to a scientific literature review prepared by the Cochrane Collaboration, the internationally recognized authority on evidence-

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<sup>1</sup> Paul F. Hogan et al., "Cost Effectiveness Analysis of Anesthesia Providers." *Nursing Economic\$*. 2010; 28:159-169. [http://www.aana.com/resources2/research/Documents/nec\\_mj\\_10\\_hogan.pdf](http://www.aana.com/resources2/research/Documents/nec_mj_10_hogan.pdf)

<sup>2</sup> B. Dulisse and J. Cromwell, "No Harm Found When Nurse Anesthetists Work Without Physician Supervision." *Health Affairs*. 2010; 29: 1469-1475. <http://content.healthaffairs.org/content/29/8/1469.full.pdf>

based practice in healthcare.<sup>3</sup> Most recently, a study published in *Medical Care* (June 2016) found no measurable impact in anesthesia complications from nurse anesthetist scope of practice or practice restrictions.<sup>4</sup>

## **II. Require CRNAs to be Included in Qualified Health Plans Participating in Association Health Plans**

The AANA supports the goal that qualified health plans participating in association health plans (AHPs) 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. The AANA believes 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 CRNAs.

Therefore, we request that CRNAs 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. CRNAs are an important type of provider with an integral role in providing anesthesia and analgesia-related care, including pain management services. They provide safe, high-quality and cost-effective anesthesia care and are advanced practice registered nurses who personally administer more than 43 million anesthetics to patients each year. Furthermore, in rural communities and other medically underserved areas of the United States, CRNAs can be the sole anesthesia professionals. Their presence enables hospitals and other healthcare facilities to offer obstetrical, surgical, and trauma stabilization services to patients who might otherwise be forced to travel long distances for this essential care. 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 CRNAs in their networks by expressly recognizing CRNAs as eligible professionals in health plans networks. This would help ensure patient access to a range of

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<sup>3</sup> Lewis SR, Nicholson A, Smith AF, Alderson P. Physician anaesthetists versus non-physician providers of anaesthesia for surgical patients. *Cochrane Database of Systematic Reviews* 2014, Issue 7. Art. No.: CD010357. DOI: 10.1002/14651858.CD010357.pub2. <http://onlinelibrary.wiley.com/doi/10.1002/14651858.CD010357.pub2/abstract>

<sup>4</sup> Negrusa B et al. Scope of practice laws and anesthesia complications: No measurable impact of certified registered nurse anesthetist expanded scope of practice on anesthesia-related complications. *Medical Care* June 2016, [http://journals.lww.com/lww-medicalcare/Abstract/publishahead/Scope\\_of\\_Practice\\_Laws\\_and\\_Anesthesia.98905.aspx](http://journals.lww.com/lww-medicalcare/Abstract/publishahead/Scope_of_Practice_Laws_and_Anesthesia.98905.aspx).

beneficial, safe and cost-efficient healthcare professionals and allow CRNAs to practice to full extent of their scope of practice.

Such a recommendation is also consistent with the recent findings and recommendations of the National Academy of Medicine, whose report titled *The Future of Nursing: Leading Change, Advancing Health* calls for removing barriers so that advanced practice registered nurses (APRNs), including CRNAs, can practice to the full extent of their education and training, indicating that APRNs play a critical role in the future of health care.<sup>5</sup> It also supports the agency's objective of achieving the triple aim of health care which includes, improving the experience of care, improving the health of populations, and reducing per capita costs of health care. CRNAs are an important component in helping achieve the triple aim because they ensure patient safety and access to safe, high-quality care, and promote healthcare cost savings.

### **III. Appropriate Enforcement of the Provider Nondiscrimination Law Promotes Consumer Choice and Market Competition, Advancing Patient Safety Innovations and Cost-Efficiency in the Public Interest**

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>6</sup> which took effect January 1, 2014, prohibits health plans from discriminating against qualified licensed healthcare professionals, such as CRNAs, solely on the basis of their licensure. This law promotes access to healthcare and consumer choice of healthcare professionals, and helps reduce healthcare costs through competition.

This law promotes competition and consumer choice by prohibiting discrimination based on provider licensure that keeps patients from getting the care they need. To promote patient access to care, health insurers and health plans must all avoid discrimination against qualified, licensed healthcare

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<sup>5</sup> IOM (Institute of Medicine). *The Future of Nursing: Leading Change, Advancing Health* (Washington, DC: The National Academies Press, 2011).

<sup>6</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 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."

professionals solely on the basis of licensure. The Provider Nondiscrimination provision also respects local control of healthcare systems and local autonomy in the organization of health plans and benefits. It does not impose “any willing provider” requirements on health plans, and it does not prevent group health plans or health insurance issuers from establishing varying reimbursement rates based on quality or performance measures.

The AANA interprets Section 2706 to protect patient choice and access to a range of beneficial providers and prevent discrimination by health insurance plans against an entire class of health professionals, such as CRNAs. We believe it is discrimination if health plans or health insurers have a policy that reimburses differently for the same services provided by different provider types solely on account of their licensure. While health plans might believe this is a cost-effective way to save money and lower health care costs, this would direct cases to more expensive providers, such as anesthesiologists, leading to impaired access, increased costs and lower quality of care. The AANA also interprets the Provider Nondiscrimination provision to mean that if a health plan or health insurer network offers a specific covered service, they should include in their network all types of providers who can offer that service. For example, if a health plan offers coverage for anesthesia services, they should allow all anesthesia providers to participate in their networks and they cannot refuse to contract with CRNAs just based on their licensure alone.

Medicare reimburses CRNAs directly for their services and does so at 100 percent of the physician fee schedule amount for services, the same rate as physicians for the same services. The Omnibus Budget Reconciliation Act (OBRA) of 1986 authorized direct reimbursement of CRNA services under Medicare Part B beginning in 1989.<sup>7</sup> The Medicare regulation implementing the OBRA law, updated as part of a November 2012 final rule further clarifying the authorization of direct reimbursement of nurse anesthesia services within the provider’s state scope of practice,<sup>8</sup> states, “Medicare Part B pays for anesthesia services and related care furnished by a certified registered nurse anesthetist who is legally authorized to perform the services by the State in which the services are furnished.”<sup>9</sup> The final rule also states, “Anesthesia and related care means those services that a certified registered nurse anesthetist is legally authorized to perform in the state in which the services are furnished.” The agency also said in the rule’s preamble, “In addition, we agree with commenters that the primary

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<sup>7</sup> Pub.L. 99-509 (42 U.S.C. § 1395 l(a)(1)(H), 42 U.S.C. § 1395 x(s)(11)).

<sup>8</sup> 77 Fed. Reg. 68892 (November 16, 2013)

<sup>9</sup> 42 C.F.R. § 410.69(a)

responsibility for establishing the scope of services CRNAs are sufficiently trained and, thus, should be authorized to furnish, resides with the states.”<sup>10</sup> Therefore, the Medicare agency stands on solid ground in clarifying that the nondiscrimination provision should apply to private plans in a way that is consistent with Medicare direct reimbursement of CRNA services where they are allowed to furnish those services under state law. Therefore, we recommend removal of any barriers to reimbursement for plans in the exchange (related to cost effective models). For example, currently in Massachusetts health plans in the exchange are mirroring Medicaid reimbursement policy for CRNAs and will begin to directly reimburse for CRNA anesthesia services in Massachusetts. We encourage all private health insurance plans (and Medicaid) to model reimbursement in the Medicare program.

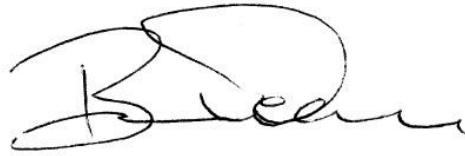
Proper implementation of the Provider Nondiscrimination law is crucial because health plans have latitude to determine the quantity, type, and geographic location of healthcare professionals they need to ensure availability of healthcare benefits to their enrollees. However, when health plans organize their healthcare delivery in such a way that they discriminate against whole classes of qualified licensed healthcare professionals by licensure, for example, by prohibiting reimbursement for anesthesia and pain management services provided by CRNAs, patient access to care is impaired, consumer choice suffers, and healthcare costs climb for lack of competition. Additionally, such discrimination provides incentives for the use of higher-cost providers without improving quality or access to care. Promoting nondiscrimination encourages consumers to be able to choose anesthesia care from qualified, licensed healthcare professionals such as CRNAs who perform the same services to the same high level of quality as other qualified providers.

The AANA appreciates this opportunity to comment on this proposed rule. CRNAs are vital to resolving the challenges facing our nation’s healthcare system and we look forward to partnering with the agency to show the important role CRNAs can have in achieving the main goals of meaningful reform, reducing health care costs, and improving access to the highest quality healthcare. Should you have any questions, please feel free to contact the AANA Senior Director of Federal Government Affairs, Ralph Kohl, at 202-741-9080 or [rkohl@aanadc.com](mailto:rkohl@aanadc.com).

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<sup>10</sup> Ibid

Sincerely,

A handwritten signature in black ink, appearing to read "Bruce". The signature is fluid and cursive, with a large, prominent "B" at the beginning.

Bruce A. Weiner, DNP, MSNA, CRNA  
AANA President

Cc: Randall Moore II, DNP, MBA, CRNA, AANA CEO  
Ralph Kohl, AANA Senior Director of Federal Government Affairs  
Randi Gold, MPP, AANA Senior Associate Director Federal Regulatory and Payment Policy