

December 4, 2020

The Honorable Alex M. Azar, II
Office of the Secretary
U.S. Department of Health and Human Services
200 Independence Avenue SW
Washington, DC 20201

RE: Securing Updated and Necessary Statutory Evaluations Timely; RIN 0991-AC24

Dear Secretary Azar,

The American Association of Nurse Practitioners (AANP), on behalf the over 290,000 nurse practitioners (NPs) across the nation, appreciates the opportunity to provide comment in response to the proposed rule “Securing Updated and Necessary Statutory Evaluations Timely.” While we recognize that the Regulatory Flexibility Act directs agencies to conduct period reviews of their regulations in order to identify outdated regulations that need to be updated, we have significant concerns regarding the review process and sunset policies proposed in this rule. Accordingly, we request that HHS withdraw this proposed rule.

NPs are advanced practice registered nurses who are prepared at the masters or doctoral level to provide primary, acute, chronic and specialty care to patients of all ages and walks of life. Daily practice includes: assessment; ordering, performing, supervising and interpreting diagnostic and laboratory tests; making diagnoses; initiating and managing treatment including prescribing medication and non-pharmacologic treatments; coordinating care; counseling; and educating patients and their families and communities. NPs practice in nearly every health care setting including clinics, hospitals, Veterans Health Administration and Indian Health Services facilities, emergency rooms, urgent care sites, private physician or NP practices (both managed and owned by NPs), skilled nursing facilities (SNFs), nursing facilities (NFs), schools, colleges and universities, retail clinics, public health departments, nurse managed clinics, homeless clinics, and home health. Nurse practitioners hold prescriptive authority in all 50 states and the District of Columbia and complete more than one billion patient visits annually.

In this proposed rule, CMS notes that the Regulatory Flexibility Act (RFA) requires agencies to conduct retrospective regulatory reviews, and that past presidents have leaned in this direction via executive order. While we agree with the importance of conducting regulatory reviews to identify outdated regulations, we note that neither the RFA nor any executive order takes the additional step of sunseting regulations that are not reviewed.

This rule could result in having necessary regulations expire through inaction causing confusion and complication as well as depriving entities that are reliant on these rules and the public of notice-and -comment rule making procedures. While HHS notes that they do not “intend” or “anticipate” this to take place, there is nothing in the proposed rule that would prevent this outcome for the majority of regulations promulgated under the authority of HHS.

Additionally, the proposed rule states that if the Department determines that a regulation should be amended or rescinded it shall do so within two years of that date. If that is not feasible, then the Department could utilize its enforcement discretion to not enforce the regulation until it is rescinded or amended. Under this rule, the public would be notified of these decisions in the Federal Register after the decision has already been made. This process deprives the public of the ability to receive notice and

provide comment on rulemaking as granted under the Administrative Procedures Act. The publishing of these decisions after they are completed without public input would lead to an opaque rulemaking process and give excessive authority to the Department to conduct rulemaking without public inspection.

Thus, we request that HHS rescind this proposed rule for the above reasons. We appreciate the Department's concerns regarding outdated regulations that have not been reviewed and agree that regulatory reviews should take place on a more consistent basis. However, we do not believe this proposed rule is the appropriate mechanism to achieve this objective.

We thank you for the opportunity to comment on this proposed rule. Should you have comments or questions, please direct them to MaryAnne Sapio, V.P. Federal Government Affairs, msapio@aanp.org, 703-740-2529.

Sincerely,

David Hebert
Chief Executive Officer