

February 1, 2021

The Honorable Norris Cochran, Acting Secretary
U.S. Department of Health & Human Services (HHS)
200 Independence Avenue, SW
Washington, DC 20201

Dear Acting Secretary Cochran,

The undersigned organizations, collectively, represent the interests of the more than 430,000 NPs and PAs practicing in the United States. This includes the over 18,000 who have obtained their DATA waivers to provide access to medication-assisted treatment (MAT) to their patients and communities. We write in response to the HHS notice of *Practice Guidelines for the Administration of Buprenorphine for Treating Opioid Use Disorder* which was announced on January 12, 2021. While these announced guidelines would authorize physicians to provide MAT to up to 30 patients without requiring a DATA waiver, they would not remove this barrier for PAs and NPs. As HHS is currently reviewing regulatory actions and guidance documents that are pending publication in the Federal Register¹, and considering further actions to take to address the opioid epidemic, we strongly encourage HHS to include NPs and PAs in any efforts to increase the availability of MAT providers. Given the current magnitude of the opioid epidemic and the vital role of PAs and NPs in addressing the crisis, it is imperative that they be included in further agency actions.

As you know, with the passage of the *Comprehensive Addiction and Recovery Act of 2016 (Pub. L. 114-198)* (CARA), NPs and PAs were temporarily authorized to provide MAT for the treatment of opioid use disorder (OUD) after taking the necessary training and obtaining a DATA waiver. The importance of this authority was recognized in the *Substance Use-Disorder Prevention that Promotes Opioid Recovery and Treatment for Patients and Communities Act (Pub. L. 115-271)* (SUPPORT Act) when Congress made permanent the authorization for PAs and NPs to obtain DATA waivers. Since the initial authority granted under CARA, the DEA has reported that over 18,000 NPs and PAs have obtained a DATA waiver.² As noted in the HHS notice of the new guidelines, MAT is the “gold standard” in treating opioid use disorder.

Studies have found that PAs and NPs have greatly increased access to MAT in rural and underserved communities.³ In rural communities, NPs and PAs were the first waived clinicians in 285 rural counties covering 5.7 million residents.⁴ Further, the Medicaid and CHIP Payment and Access Commission (MACPAC) found that the number of PAs and NPs prescribing buprenorphine for the treatment of OUD and the number of patients with OUD treated with buprenorphine by NPs and PAs increased substantially in the first year PAs and NPs were authorized to obtain their DATA waiver, particularly in rural areas and for Medicaid beneficiaries.⁵ However, according to a recent rule published by the DEA, 40% of counties still lack a DATA-waived practitioner.⁶

While these announced guidelines would remove barriers for physicians, they would exacerbate the disparity in requirements between physicians, NPs and PAs and could inadvertently lead to fewer PAs and NPs obtaining DATA waivers, which we do not believe was the intent of HHS. The reason for the

¹ <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/regulatory-freeze-pending-review/>.

² 85 FR 69153. (Nov. 2, 2020).

³ <https://jamanetwork.com/journals/jama/fullarticle/2730102?widget=personalizedcontent&previousarticle=2737024>.

⁴ <https://www.healthaffairs.org/doi/abs/10.1377/hlthaff.2019.00859>.

⁵ <https://www.macpac.gov/publication/analysis-of-buprenorphine-prescribing-patterns-among-advanced-practitioners-in-medicaid/>.

⁶ 85 FR 69153, 69154. (Nov. 2, 2020).

potential reduction in NPs and PAs obtaining DATA waivers is due to the current requirement that if a PA or NP practices in a state that requires them to maintain a collaborative relationship with a physician, that physician must also be a “qualifying practitioner” for the NP or PA to obtain their DATA waiver. If physicians are no longer required to meet the “qualifying practitioner” requirements, this could have an adverse effect on the ability of PAs and NPs in certain states to obtain their DATA waivers, many of which are among the most impacted by the opioid epidemic. For the above reasons it is vital that NPs and PAs are also included in any regulatory or subregulatory changes along with physicians.

Again, we do not believe the intent of HHS was to reduce access to MAT provided by NPs and PAs. PAs and NPs have a proven and vital role in addressing the opioid epidemic, and we look forward to working with HHS to ensure that they can continue to provide this medically necessary treatment within their communities. Accordingly, we request that NPs and PAs be included as HHS evaluates changes to these guidelines or other changes to improve access to MAT. We would be happy to have a further discussion regarding the impact of this notice and provide additional information that would be useful. If you have comments or questions, please direct them to MaryAnne Sapio, V.P. Federal Government Affairs, AANP, msapio@aanp.org or Tate Heuer, V.P. Federal Advocacy, AAPA, theuer@aapa.org.

Sincerely,

American Academy of PAs
American Association of Colleges of Nursing
American Association of Nurse Practitioners
American Nurses Association
Association of PAs in Obstetrics and Gynecology
Geriatric Medicine PAs
Gerontological Advanced Practice Nurses Association
National Association of Nurse Practitioners in Women’s Health
National Association of Pediatric Nurse Practitioners
National Organization of Nurse Practitioner Faculties
Physician Assistant Education Association
Society of PAs in Addiction Medicine