

February 28, 2022

Susan Ullman, General Counsel
U.S. Office of Special Counsel (OSC)
1730 M St. NW, #218
Washington, D.C. 20036

RE: Prohibited Personnel Practices, Disclosures of Information Evidencing Wrongdoing, FOIA, Privacy Act, and Disability Regulations To Conform With Changes in Law and Filing Procedures and Other Technical Changes

Dear Ms. Ullman,

The American Association of Nurse Practitioners, representing more than 325,000 nurse practitioners (NPs) in the United States, appreciates the opportunity to provide comment on the proposed revisions to the Privacy Act regulations, specifically the provisions related to the disclosure of medical records in 5 § 1830.4. Under these regulations, when an individual requests access to their medical records, OSC may advise the requesting individual that the records will only be provided to their designated physician, and that the physician will be authorized to review the records once the designation is received and their identity is verified.

While AANP certainly agrees with protecting the privacy of medical information, **we respectfully request that OSC update these regulations to replace the term “physician” with “licensed health care professional.”** This will maintain the privacy protection that is in place, while also ensuring that an individual who selects a nurse practitioner, or other licensed health care professional, as their provider of choice, is authorized to designate that clinician as the recipient of their medical records.

As you may know, 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 backgrounds. 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 hold prescriptive authority in all 50 states and the District of Columbia (D.C.) and perform more than one billion patient visits annually.

NPs practice in nearly every health care setting including hospitals, clinics, 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) and nursing facilities (NFs), schools, colleges and universities, retail clinics, public health departments, nurse managed clinics, homeless clinics, and home health care settings. Federal employees may also select NPs as their primary care providers within Federal Employees Health Benefits plans.

As of 2019, there were more than 163,000 NPs billing for Medicare services, making NPs the largest and fastest growing Medicare designated provider specialty.¹ Approximately 40% of Medicare patients receive billable services from a nurse practitioner² and approximately 80% of NPs are seeing Medicare and Medicaid patients.³ NPs have a particularly large impact on primary care as approximately 70% of all

¹ <https://www.cms.gov/files/document/2019cpsmdcrproviders6.pdf>

² *Ibid.*

³ [NP Fact Sheet \(aanp.org\)](#)

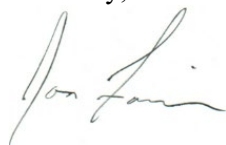
NP graduates deliver primary care.⁴ In fact, they comprise approximately one quarter of the primary care workforce, with that percentage growing annually.⁵

In a December 9, 2021, presentation assessing payment adequacy⁶, the Medicare Payment Advisory Commission (MedPAC) noted a rapid growth in nurse practitioners providing care to beneficiaries. This same presentation noted that “from 2015 to 2020, encounters per beneficiary with primary care physicians *decreased* by 4.2% per year while encounters with APRNs and PAs *increased* by 8.3% per year.” In an October MedPAC meeting, the Commission found that APRNs and PAs accounted for a third of all primary care clinicians nationwide and up to half of all primary care clinicians in rural areas.⁷ According to the Health Care Cost Institute, between 2012-2016 primary care visits performed by physicians declined by 18 percent, while visits performed by NPs and PAs increased by 129 percent for employer sponsored health plans.⁸

Patients nationwide are selecting nurse practitioners as their health care providers of choice. Individuals who are requesting medical records subject to the Privacy Act should have the authority to designate a nurse practitioner, or other licensed health care professional, to be the recipient of these records. This will both ensure that their privacy is protected, and support the authority of an individual to have the record reviewed by the licensed health care professional of their choosing. **Accordingly, we respectfully reiterate our request for OSC to replace the term “physician” in these regulations with “licensed health care professional.”**

We appreciate the opportunity to comment on the proposed revisions to Privacy Act regulations. Should you have comments or questions, please contact MaryAnne Sapio, V.P. Federal Government Affairs, msapio@aanp.org, 703-740-2529.

Sincerely,



Jon Fanning, MS, CAE, CNED
Chief Executive Officer
American Association of Nurse Practitioners

⁴ <https://www.aanp.org/about/all-about-nps/np-fact-sheet>.

⁵ [Rural and Nonrural Primary Care Physician Practices Increasingly Rely On Nurse Practitioners](#), Hilary Barnes, Michael R. Richards, Matthew D. McHugh, and Grant Martsolf, *Health Affairs* 2018 37:6, 908-914.

⁶ [December 9-10, 2021 – MedPAC](#)

⁷ [Mandated report: The Protecting Access to Medicare Act of 2014’s changes to the Medicare clinical laboratory fee schedule](#) (medpac.gov)

⁸ <https://healthcostinstitute.org/hcci-research/trends-in-primary-care-visits>.