

December 13, 2022

The Honorable Martin J. Walsh
Secretary
U.S. Department of Labor
200 Constitution Avenue NW
Washington, DC 20210

RE: Employee or Independent Contractor Classification Under the Fair Labor Standards Act

Dear Secretary Walsh:

Thank you for the opportunity to comment on the proposed rule on modifying employee or independent contractor classification under the Fair Standards Labor Act. We appreciate your intended goal of ensuring safe and healthy working conditions for all American workers. However, we write today to request that the Department of Labor further consider the implications of these rules on physicians, nurse practitioners, physician assistants, and other advanced practice health care professionals prior to the issuance of any final rulemaking. This proposed rule, as written, contains provisions which could be problematic for these practitioners.

The American health care delivery system is complex, and relies upon all types of workers to meet changing health needs in a wide range of settings across all hours of the day. As you know, we continue to face a significant health care workforce shortage – and the proposed rule as written could exacerbate these challenges. An example is America’s response to COVID-19, which has relied on rapid flexibility for health care providers to meet the immediate health care demands of their communities. These strategies have included hiring retirees, and other professionals on a contractual basis as needed. This rapid deployment would not have been possible without these contractual arrangements.

In the health care system, it is common for a physician or advanced practice health care professional to work in a part-time contract capacity in more than one setting. This allows their specialized expertise to be utilized across the health care system and to enable more patient access to care. A skilled nursing facility, telehealth practice, rural health clinic, or other small provider might not have sufficient demand to sustain a full-time practitioner, but could contract with a practitioner to ensure patient access to specialized care several days a week. It is critical that the proposed rule ensure appropriate flexibility within the health care workforce so providers can continue to meet the health care needs of their communities.

It is also important to note that the COVID-19 pandemic has impacted the health care employment landscape, and may influence a clinician’s decision on their preferred employment arrangement. We support the Department of Labor’s stated intent to “help protect workers from misclassification while at the same time recognizing that independent contractors serve an important role in our economy and providing a consistent approach for those businesses that engage (or wish to engage) independent

contractors.”¹ The Department of Labor should also recognize that individuals may choose to be employed as independent contractors in order to best serve the needs of their organization and the broader community. Long-standing structural health care workforce shortages have led to a need for flexible employment arrangements, including for clinicians who choose contracted employment arrangements. These allow providers to continue to provide care in their communities, while also maintaining flexibility in their schedule.

In light of the challenges facing the health care workforce, we strongly recommend that the Department fully consider the complexities of employment arrangements for health care providers. We strongly encourage the final rule to include provisions ensuring that these practitioners will continue to have the flexibility to engage in contractual and employment arrangements that meet their needs and expand patient access to care. We welcome the opportunity to further engage with the Department to ensure this proposed rule adequately addresses these concerns.

Sincerely,

American Academy of Family Physicians
American Academy of Neurology
American Academy of Physician Associates
American Association for Respiratory Care
American Association of Nurse Anesthesiology
American Association of Nurse Practitioners
American College of Emergency Physicians
American College of Obstetricians and Gynecologists
American Medical Association
Anxiety and Depression Association of America
California Medical Association
Clinical Social Work Association
National Association of Pediatric Nurse Practitioners
National Association of Rural Health Clinics
National Rural Health Association
Society of General Internal Medicine
Texas Medical Association

¹ [Federal Register: Employee or Independent Contractor Classification Under the Fair Labor Standards Act](#)