

September 11, 2023

The Honorable Christopher J. Williamson  
Assistant Secretary of Labor for Mine Safety and Health  
The Mine Safety and Health Administration (MSHA)  
Office of Standards, Regulations, and Variances  
201 12th Street South, Suite 4E401  
Arlington, Virginia 22202-5450

**RE: Lowering Miners' Exposure to Respirable Crystalline Silica and Improving Respiratory Protection; RIN 1219-AB36**

Dear Assistant Secretary Williamson,

On behalf of the American Association of Nurse Practitioners (AANP), and the more than 355,000 nurse practitioners (NPs) in the United States, we appreciate the opportunity to provide comment on this proposed rule. We support the Administration's goals of lowering miners' exposure to respirable crystalline silica and improving respiratory protection for miners. We look forward to working with the Administration to ensure that miners have access to the high-quality health care that they require and deserve.

As you 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. Currently, twenty-seven states, the District of Columbia and two U.S. territories have adopted full practice authority, granting patients full and direct access to nurse practitioners.

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.

According to the Medicare Payment Advisory Commission (MedPAC), APRNs and PAs comprise approximately one-third of our primary care workforce, and up to half in rural areas.<sup>1</sup> NPs are also "significantly more likely than primary care physicians to care for vulnerable populations. Nonwhites, women, American Indians, the poor and uninsured, people on Medicaid, those living in rural areas, Americans who qualify for Medicare because of a disability, and dual-eligibles are all more likely to receive

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<sup>1</sup> [https://www.medpac.gov/wp-content/uploads/2022/06/Jun22\\_MedPAC\\_Report\\_to\\_Congress\\_SEC.pdf](https://www.medpac.gov/wp-content/uploads/2022/06/Jun22_MedPAC_Report_to_Congress_SEC.pdf) (see Chapter 2.)

primary care from NPs than from physicians.”<sup>2</sup> MedPAC also found that, among all clinician types, NPs on average had the highest share of allowed charges associated with low-income subsidy (LIS) beneficiaries, which includes Medicaid beneficiaries. “In 2019, 41 percent of the allowed charges billed by NPs who practiced in primary care were for LIS beneficiaries, as were 36 percent for NPs who practiced in specialty care compared with 28 percent for primary care physicians and PAs and 25 percent for specialty care physicians and PAs.”<sup>3</sup>

The COVID-19 pandemic has exposed and exacerbated many severe and pervasive health and social inequities in America,<sup>4</sup> and has highlighted long-standing vulnerabilities in the American health care system, some of which have and can be resolved by removing barriers to care provided by nurse practitioners. NPs have long been essential health care providers in underserved communities and play a critical role as primary care providers for vulnerable populations.<sup>5, 6, 7</sup> As noted in the National Academy of Medicine (NAM) *Future of Nursing* report “nurses work in areas that are underserved by other health care providers and serve the uninsured and underinsured.”<sup>8</sup> We appreciate MSHA’s focus on ensuring that miners have access to high-quality health care and are able to receive the necessary medical examinations to improve respiratory protection and protect miners from exposure to respirable crystalline silica and the resulting health impacts. Below are our comments regarding specific provisions of this proposed rule.

In order to ensure miners have access to required medical examinations, proposed paragraph 60.15(a) would require medical examinations to be performed by a physician or other licensed health care professional (PLHCP) or specialist. According to MSHA, a PLHCP is defined as “an individual whose legally permitted scope of practice (i.e., license, registration, or certification) allows that individual to independently provide or be delegated the responsibility to provide some or all of the required health services (i.e., chest X-rays, spirometry, symptom assessment, and occupational history).” The rationale is that MSHA “believes it is appropriate to allow not only a physician, but also any State-licensed health care professional, to perform the required medical examinations. This would provide operators with the flexibility needed to use professionals with necessary medical skills and minimize cost and compliance burdens.”<sup>9</sup> MSHA is also proposing to authorize PLHCPs to certify when a miner is unable to wear a respirator and should be immediately transferred to work in another section of the mine where a respirator is not required.

<sup>2</sup> <https://www.aei.org/research-products/report/nurse-practitioners-a-solution-to-americas-primary-care-crisis/>

<sup>3</sup> [https://www.medpac.gov/wp-content/uploads/2023/03/Mar23\\_MedPAC\\_Report\\_To\\_Congress\\_SEC.pdf](https://www.medpac.gov/wp-content/uploads/2023/03/Mar23_MedPAC_Report_To_Congress_SEC.pdf) (Page 135).

<sup>4</sup> <https://www.govinfo.gov/content/pkg/FR-2021-01-26/pdf/2021-01852.pdf>

<sup>5</sup> Davis, M. A., Anthopolos, R., Tootoo, J., Titler, M., Bynum, J. P. W., & Shipman, S. A. (2018). Supply of Healthcare Providers in Relation to County Socioeconomic and Health Status. *Journal of General Internal Medicine*, 4–6. <https://doi.org/10.1007/s11606-017-4287-4>.

<sup>6</sup> Xue, Y., Smith, J. A., & Spetz, J. (2019). Primary Care Nurse Practitioners and Physicians in Low-Income and Rural Areas, 2010-2016. *Journal of the American Medical Association*, 321(1), 102–105.

<sup>7</sup> Andrilla, C. H. A., Patterson, D. G., Moore, T. E., Coulthard, C., & Larson, E. H. (2018). Projected Contributions of Nurse Practitioners and Physicians Assistants to Buprenorphine Treatment Services for Opioid Use Disorder in Rural Areas. *Medical Care Research and Review*, Epub ahead. <https://doi.org/10.1177/1077558718793070>

<sup>8</sup> NASEM: The Future of Nursing 2020-2030: Charting a Path to Achieve Health Equity P.103

<sup>9</sup> 88 FR 44857.

We agree with MSHA and strongly support the proposal to authorize the medical examinations to be performed by a PLHCP, which would include nurse practitioners, and the proposal that PLHCPs are authorized to certify when a miner is not able to wear a respirator. NPs are qualified to make these determinations, the high-quality of care provided by NPs is equivalent to their physician colleagues<sup>10</sup>, and performing histories and examinations, ordering and interpreting X-rays and other diagnostic testing is consistent with NP scope of practice. As noted above, NPs provide significant amounts of care across the country, particularly in the rural and underserved communities where mines are located and which are experiencing clinician shortages. Ensuring that miners are authorized to receive medical examinations from NPs and other PLHCPs will increase access to high-quality care for miners and ensure that they are properly diagnosed and treated for respiratory conditions related to their employment. However, we do respectfully request that MSHA amend 60.15(d) to read “Medical examinations results. The results of medical examinations or tests made pursuant to this section shall be provided only to the miner, and at the request of the miner, to the miner’s designated ~~physician~~ PLHCP.” *(additional language added in italics)* This will better align (d) with the other regulations and ensure that when a miner chooses a designated clinician other than a physician, there are no barriers to that clinician receiving the examination results.

**Conclusion**

We look forward to continuing to work with MSHA to ensure that miners have access to high-quality health care. Please contact MaryAnne Sapio, V.P. Federal Government Affairs, [msapio@aanp.org](mailto:msapio@aanp.org), 703-740-2529 for further discussion.

Sincerely,



Jon Fanning, MS, CAE, CNED  
Chief Executive Officer

American Association of Nurse Practitioners

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<sup>10</sup> <https://www.aanp.org/advocacy/advocacy-resource/position-statements/quality-of-nurse-practitioner-practice>.