



July 1, 2021

The Honorable Miguel Cardona
Secretary
U.S. Department of Education
400 Maryland Avenue, SW
Washington, D.C. 20202

RE: **Negotiated Rulemaking for Title IV Regulations: Higher Education Act:
Public Service Loan Forgiveness Program:** 86 FR 28299; Agency/Docket # ID ED-2021-OPE-0077;
Document # 2021-11120
Request Amendments to Allow California and Texas Physicians to Receive Loan Forgiveness

Dear Secretary Cardona:

On behalf of the more than 100,000 physicians, residents, and medical student members of the California Medical Association and the Texas Medical Association, the hundreds of hospitals represented by the California Hospital Association and the Texas Hospital Association, and our patients, we are writing to urge you to open a negotiated rulemaking process for the Public Service Loan Forgiveness (PSLF) Program to correct the implementing regulation that unjustly denies PSLF benefits to California and Texas physicians who are dedicated to serving their patients and the public good in non-profit community hospitals, rural hospitals, and children's hospitals, and clinics. California and Texas are at a severe disadvantage in recruiting young physicians who are choosing to practice in other states where their \$250,000 in average medical student loan debt can be forgiven. We urge the Department to

ensure there is equal treatment of physicians, hospitals, and patients in all 50 states under the PSLF Program. The PSLF regulation is unnecessarily harming patient access to care in both of our states.

PSLF Regulation Excludes Most California and Texas Physicians

Congress enacted the PSLF Program in 2007 through the College Cost Reduction Act. The PSLF Program has the laudable purpose of encouraging individuals to commit to substantial public service work over a prolonged period of 10 years. Thousands of physicians in California and Texas dedicate themselves every day to treating our state's neediest and sickest patients. These physicians work in community clinics and private non-profit community hospitals, including rural and children's hospitals, among other settings. They can meet the statutory criteria for loan forgiveness under the PSLF Program. *Sections 455(m)(1)(B)(i) and (ii) of the Higher Education Act of 1965*, as amended (HEA), stipulate that, to qualify for public service loan forgiveness, a borrower must be "employed in a public service job at the time of such forgiveness" and must have been "employed in a public service job during the period in which the borrower makes each of the 120 payments." These physicians can also satisfy the Department's PSLF regulation requiring "full-time" work at a "public service organization." *See 34 CFR Section 685.219(b)*. Indeed, the Department specifically recognizes the eligibility of "nurses, nurse practitioners, nurses in a clinical setting, and full-time professionals engaged in health care practitioner occupations" at public service organizations, including private, non-profit hospitals in particular. *Id.*

However, most independent, hospital-based physicians in California and Texas have been rendered ineligible under the Department's PSLF regulation that narrowly requires that "an individual [be] hired and paid by a public service organization." *See 34 CFR 685.219(b)*. Unlike any other health care professional working at private, non-profit hospitals, many physicians cannot be employed by the hospital under California or Texas law known as the "bar on the corporate practice of medicine." (*See California Business and Professional Code Section 2052 and 2400; Conrad v. Medical Board*, 48 Cal. App. 4th 1038 (1996); 11 Ops. Cal. Atty. Gen 236 (1948) (private non-profit hospital may not employ physicians and charge patients for services); 54 Ops. Cal. Atty. Gen 126 (1971) (hospital may not employ a physician to provide emergency service)). Rather, most California and Texas physicians practice in hospitals by authority of staff privileges conferred as part of their membership on the hospital's medical staff (a self-governing body that is independent of the hospital). In most cases, these physicians have no contractual or employment relationship with the hospital. The Department has explained that individuals are not eligible if they "are contracted to work for the organization or individuals who are hired by a for-profit company that has a contract with the public service organization." *73 Fed. Reg. 37694, 37705 (July 1, 2008)*.

In passing the PSLF legislation, Congress could not have intended the unjust scenario that yields from the Department's regulation. A physician leading the team of health care professionals treating patients at private, non-profit hospitals in California and Texas is not eligible for loan forgiveness, while the nurses, lab technicians, physician assistants, and other health care professionals on that team who are assisting in the treatment of that physician's patients are entitled to loan forgiveness due to their employment relationship with the hospital.

It is important to emphasize that the statute does not define "employed" as narrowly as the Department's implementing regulations, meaning that Congressional intent for a truly national program of debt relief was subverted when the Department promulgated inconsistent regulations that distinguished between direct employees and physicians who work in non-profit hospitals but are prohibited by state law from being directly hired and paid by such qualifying health care facilities. Until

this issue was brought to the Department's attention in 2015, the agency thought that all California and Texas physicians working at qualifying hospitals were eligible. Therefore, our requested modification will ensure that Congressional intent and the Department's assumptions are accurately implemented.

Proposed Regulatory Amendment

We respectfully urge the Department to adopt the regulatory modification listed below to ensure the inclusion of California and Texas physicians who provide medical care in qualifying non-profit facilities.

34 CFR Section 685.219

FULL-TIME JOB AS HEALTH CARE PRACTITIONER".

The term 'full-time professionals engaged in health care practitioner occupations' includes an individual who—

“(i) has a full-time job as a health care practitioner;

“(ii) provides medical services in such full-time job at a nonprofit hospital or public hospital or other nonprofit or public health care facility; and

“(iii) is prohibited from being employed directly by such hospital or other health care facility by State law.”

Exclusion of California and Texas Physicians is Harming Patient Access to Care

According to a new study, California and Texas are the two states projected to experience the largest physician shortages over the next decade. (*Human Resources Health, Feb 2020*). Our states already have some of the lowest primary care-to-patient ratios in the nation (TX ranks 45th), and many patients are forced to travel long distances to find specialty care and mental health services. Our states also have the highest percentage of physicians at retirement age, particularly in underserved and rural communities. California and Texas physicians' inability to receive loan forgiveness is harming our efforts to attract newly trained young physicians that replenish the older physician workforce and prevent further physician shortages. We must be able to operate on a level-playing field with other states to attract young physicians who can keep pace with the increasing demand for patient care. **The data show that California and Texas are clearly being disadvantaged by the inadvertent errors made in the implementation of the PSLF Program that do not allow our states to maintain an appropriate physician workforce.**

Because the average student loan debt for medical students is now \$250,000, most young physicians must obtain some form of loan forgiveness to cover their debt. In the rural and underserved regions of California and Texas, at least half the physicians leave after finishing their medical residency training, partly because they cannot obtain loan forgiveness. California and Texas physicians must be provided an equitable opportunity to participate in the federal loan forgiveness program to protect access to medical care in these underserved communities.

Physician shortages became particularly acute during the COVID-19 pandemic when patients needed timely access to critical care. According to a poll taken by the Association of American Medical Colleges, 35% of voters said they had trouble finding a doctor prior to the pandemic. The substantial gap between increasing health care demands and supply of doctors became more evident during the COVID-19 public health crisis. Physician practices and hospitals are still struggling to recover and maintain access to care. In California's rural areas, 60% of the primary care practices that closed earlier in the year

have not reopened. Fixing the PSLF regulation would greatly help our states maintain our physician workforce to meet current and future health care challenges.

Parity for California and Texas Physicians, Hospitals, and Patients

A regulatory modification would also provide parity for California and Texas so that physicians in all 50 states are afforded the same loan forgiveness after they have served for 10 years in a qualifying nonprofit community hospital or clinic. Equal treatment of physicians, hospitals, and patients in every state is imperative to truly protect the public interest.

We urge the Department to correct the regulation, consistent with Congressional intent, to ensure patient access to physician medical care in nonprofit community hospitals, children’s hospitals, and rural hospitals across California and Texas.

If you have questions or need additional information, please contact Elizabeth McNeil, CMA, emcneil@cmadocs.org; (415) 310-2877. Thank you.

Sincerely,



Dustin Corcoran, CEO
California Medical Association



Michael Darrouzet, CEO
Texas Medical Association



Carmela Coyle, President & CEO
California Hospital Association



Ted Shaw, President & CEO
Texas Hospital Association