CALIFORNIA MEDICAL ASSOCIATION

California Hospital Association

Texas Hospital Association

August 11, 2022

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

RE: Public Service Loan Forgiveness Regulations
Docket ID ED-2021-OPE-0077: Student Assistance General Provisions, Federal Perkins Loan Program, Federal Family Ed Loan Program, and William D. Ford Federal Direct Loan Program

Dear Secretary Cardona:

On behalf of the more than 100,000 physicians, residents, and medical student members of the California Medical Association (CMA) and the Texas Medical Association (TMA), the hundreds of hospitals represented by the California Hospital Association (CHA) and the Texas Hospital Association (THA), and our millions of patients, we want to thank you for the opportunity to comment on the Public Service Loan Forgiveness (PSLF) Program proposed regulations and the Department's specific request for comments on the California and Texas physician eligibility issues. See 87 Fed. Reg. 41878, 41933 (July 13, 2022). We are offering a regulatory solution for California and Texas physicians, hospitals, and patients, that is detailed below. We truly appreciate the Department's willingness to address our issues. It will make an enormous difference in patient access to health care in our states.

Our organizations urge the Department to provide student loan forgiveness under the federal PSLF Program to California and Texas physicians who work full time in private, nonprofit public service organization hospitals and clinics and meet all program repayment requirements. These physicians would be eligible for PSLF Program participation, except the Department's 2008 implementing regulation narrowly interpreted the PSLF statute to require that applicants be

directly employed by their qualifying employer. California and Texas law generally prohibits private, nonprofit hospitals from directly employing physicians who work in their hospital. As currently written, the Department's PSLF regulation unjustly denies PSLF benefits to many California and Texas physicians who are dedicated to serving their patients and the public health in nonprofit community hospitals, rural hospitals, children's hospitals, and clinics but are not able to be employed through no fault of theirs. This puts California and Texas at a severe disadvantage in recruiting young physicians who may choose to practice in other states where their substantial medical student loan debt can be forgiven. If the PSLF regulation is not fixed for California and Texas, our physician shortages will accelerate and unnecessarily harm patient access to health care. Excluding physicians in the two largest states with some of the greatest needs does not meet the policy intent of the program.

We urge the Department to ensure there is equal treatment of physicians, hospitals, and patients in all 50 states under the PSLF Program. CMA, TMA, CHA, and THA below articulate an effective solution that narrowly fixes this problem without any collateral consequences. Our California and Texas congressional delegations have written in bipartisan support of such a fix. We all join in asking the Department to take action to address the California-Texas physician eligibility issues in these regulations.

I. PSLF PROGRAM ELIGIBILITY FOR CALIFORNIA AND TEXAS PHYSICIANS WORKING IN PRIVATE, NONPROFIT HOSPITALS

The PSLF Program is intended to encourage individuals to meaningfully engage in public service work by forgiving the remaining balance of their federal student loans if they meet the statutory requirement of being "employed in a public service job" and satisfy all loan payment requirements. *See* 20 U.S.C. §1087e(m)(1)(B)(i). The Department has determined through regulation that "employee" and "employed" mean an individual is "hired and paid by a public service organization." 34 Code Fed. Reg. §685.219(b). In proposing this definition, the Department only indicated a desire to exclude "individuals who 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). No comments were addressed concerning this definition in the final rulemaking file. *See* 73 Fed. Reg. 63232, 63242-43 (October 23, 2008).

Nonprofit hospitals can fall within the definition of a "public service organization" as a 501(c)(3) tax exempt organization and/or as a private organization that provides public health through full-time professionals engaged in health care practitioner occupations. *See* 34 Code Fed. Reg. §685.219(b). Physicians working full time at these nonprofit hospitals can qualify for PSLF under the Department's regulation when they demonstrate that they are "hired and paid by" the hospital. Indeed, we believe physicians working in hospitals throughout most of the country can and have met the eligibility requirements to participate in the PSLF Program.

Similarly situated physicians in California and Texas, however, have been inadvertently excluded from participation in the PSLF Program due to a confluence of the Department's definition of employee/employed and laws unique to California and Texas that generally prohibit private, nonprofit hospitals from directly employing physicians. To be clear, there are physicians in California and Texas who work full time in private, nonprofit hospitals (e.g., emergency room

doctors, critical care hospitalists, ICU intensivists, neonatologists) and satisfy loan repayment conditions but who cannot participate in the PSLF Program solely because they cannot be "hired and paid by" their nonprofit hospital under state law. Physicians in all other states would be eligible and have benefitted from the PSLF Program.

A. California and Texas Laws Limiting the Corporate Practice of Medicine

The practice of medicine involves professional licensure that is premised on personal qualification, responsibility, and accountability of individual physicians. The modern delivery of medical care, however, often can involve complex systems and arrangements endemic in corporate structures that are vaster than any individual physician. As the American Health Lawyers Association (AHLA) explains, "a long-standing principle, the corporate practice of medicine doctrine (CPOM), seeks to prohibit a non-physician from interfering with a physician's professional judgment by prohibiting corporations not owned or controlled by physicians from employing physicians to practice medicine and charge for those professional services." AHLA, *Corporate Practice of Medicine: A Fifty State Survey*, Amer. Health Lawyers Assn (2020) at preface. CPOM laws exist in various forms in virtually all 50 states, with certain states adopting various models of the doctrine and a few others eliminating the prohibition completely. Id. For example, there are CPOM laws holding that corporations and other legal entities cannot hold licenses to practice medicine, but they can establish arrangements and modes for providing medical care to the public.

CPOM laws also can touch on the relationships between physicians and corporations to shape the contours of integration and influence between the parties over how medical care can be delivered. California and Texas have CPOM laws that generally prohibit private, nonprofit hospitals (among some other legal entities) from directly employing physicians. *See Conrad v. Medical Board*, 48 Cal. App. 4th 1038, 1041 (1996) (local health care district hospitals cannot employ physicians under CPOM); 11 Ops. Cal. Atty. Gen 236 (1948) (private nonprofit hospital may not employ physicians and charge patients for services); *Gupta v. E. Idaho Tumor Inst., Inc.*, 140 S.W.3d 747, 752 (Tex. App. 2004) ("Under the Medical Practice Act, when a corporation comprised of lay persons employs licensed physicians to treat patients and the corporation receives the fee, the corporation is unlawfully engaged in the practice of medicine").

While such a prohibition has existed in California and Texas for many decades, no other state today has a similarly explicit prohibition on direct employment of physicians by private, nonprofit hospitals. CMA, TMA, and many other physician advocacy organizations have been steadfast in maintaining this aspect of the CPOM laws in California and Texas. CHA, THA, and other hospital advocacy groups may disagree, but they acknowledge that the prohibition on direct employment of physicians at private, nonprofit hospitals has existed for many decades and will likely persist. Consequently, the Department's regulation implementing the PSLF statute's requirement that an individual be "employed in a public service job" (20 U.S.C. §1087e(m)) inadvertently excludes California and Texas physicians working full time in private, nonprofit hospitals because they cannot meet the Department's regulatory definition of "employed" and be "hired and paid by" their hospitals. 34 Code Fed. Reg. §685.219(b).

B. The Department's New Proposed Revision of Section 687.219(b)

The PSLF Program has the laudable purpose of encouraging individuals to commit to substantial public service work over a prolonged period. Physicians in California and Texas, like their similarly situated counterparts in other states, can epitomize the public service work that is designed to benefit from the PSLF Program when they dedicate themselves full time to working in private, nonprofit hospitals. Such settings may include hospital community clinics providing primary care services, general medicine, and surgery departments within hospitals in underserved urban and rural communities, and children's hospitals. To be sure, such California and Texas physicians should be eligible for loan forgiveness under the PSLF statute because they are "employed in a public service job." 20 U.S.C. §1087e(m)(l)(B)(i).

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, nonprofit hospitals. See 34 CFR §685.219(b). In passing the PSLF statute and using broad language ("employed in"), Congress could not have intended the unjust scenario that yields from the Department's current requirement that "employed in" means to be "hired and paid by." A physician leading a team of health care professionals treating patients at private, nonprofit hospitals in California and Texas may not be 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 may be entitled to loan forgiveness due to their employment relationship with the hospital.

We appreciate that the Department acknowledges our concerns that "doctors in California and Texas who work fulltime at private, nonprofit hospitals but who are ineligible for PSLF because state law prohibits them from being hired by the hospital itself." 87 Fed. Reg. at 41933. We also wholeheartedly endorse the Department's desire to fix the problem in a way "that would not expand the universe of qualifying employers but rather adjust for whom a qualifying employer may sign a PSLF form." *Id*. While seeking comments to address the California and Texas CPOM issue, it does not appear that the Department has proposed a specific solution. However, we observe that the Department is proposing to replace the "hired and paid by" language to define the statutory terms "employed in a public service organization" with the following regulatory language:

> Employee or employed means an individual— (i) To whom an organization issues an IRS Form W–2; (ii) Who receives an IRS Form W–2 from an organization that has contracted with a qualifying employer to provide payroll or similar services for the qualifying employer, and which provides the Form W–2 under that contract. 87 Fed. Reg. at 42001 (proposed revision of Section 685.219(b)).

The second clause in the proposed definition may be intended to apply to California and Texas physicians working in private, nonprofit hospitals who cannot be directly employed due to state CPOM laws. We wish to make clear that this proposed new definition standing alone would not be adequate to resolve the problem. In fact, we believe the proposed language, if applied to California and Texas physicians, would run counter to the Department's stated goals of ensuring

eligibility for physicians who cannot be employed by a private, nonprofit hospital due to state CPOM laws.

First, requiring a W-2 form from an organization that contracts with a private, nonprofit hospital would not be an accurate criterion for capturing the population of California and Texas physicians who stand affected. Like many other professionals, a large proportion of physicians are not W-2 employees. Physicians in California and Texas are organized around different sorts of legal entities (e.g., partnerships, professional corporations, limited liability corporations, or sole proprietorships). These legal entities may also be members of other legal entities that are organized as independent practice associations or large multispecialty medical groups. In these various scenarios, the physician's compensation will not be reported to the IRS as employee W-2 wages. While some physicians who are starting out their careers may be employees of medical groups and hence could receive a W-2 tax form, a greater proportion do not receive W-2s because they are not employed by any organization. Instead, many physicians receive tax forms associated with partnerships and directors or owners of professional corporations. Requiring physicians to submit a W-2 form to demonstrate eligibility for loan forgiveness would capture only a small proportion of physicians who are working in private, nonprofit hospitals but who could not be employed by those hospitals and thereby would be excluded from PSLF loan forgiveness.

Second, requiring that the physician's corporation or medical group contract with the qualifying employer (i.e., the private, nonprofit hospital) "for payroll or similar services" completely misses the mark. For obvious reasons, physicians do not provide payroll or similar services to hospitals. To the extent they have any contract with a hospital, it will be for the provision of medical care and related professional services to the patients of the hospital. For example, a medical group may contract with a hospital to staff its emergency department, or a physician may contract with a hospital to serve as the chair of its anesthesiology department. While these contracts are not uncommon, many physicians practicing in private, nonprofit hospitals do not have a contractual relationship with their hospitals. Accordingly, if the Department were seeking to open PSLF eligibility to California and Texas physicians who work full time at private, nonprofit hospitals but who cannot be employed by their hospitals due to state CPOM laws, the new proposed definition of "employed" that is focused on W-2s and contracting for payroll or similar services would completely fail to address the California-Texas issue.

We believe that the Department's proposed new definition that focuses on contracts could expand eligibility for loan forgiveness across all the states. Physicians in any state who are not directly employed by a hospital that is a qualifying employer do not qualify for loan forgiveness under the Department's current PSLF regulation, but under the new proposed definition of "employee" these same physicians could qualify if they have a contractual relationship with a qualifying employer. However, physicians only contract with hospitals for the provision of medical-related services, not payroll services, and therefore, this part of the proposed definition would not work for any physician in any state. Moreover, such an expansion of eligibility seems to run directly counter to the Department's pronouncement in originally promulgating section 685.219, that loan forgiveness should not be extended to "individuals who 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. at 37705.

II. CALIFORNIA'S AND TEXAS' ALTERNATIVE PROPOSAL TO EXTEND ELIGIBILITY TO PHYSICIANS WHO CANNOT BE EMPLOYED BY PRIVATE, NONPROFIT HOSPITALS DUE TO CPOM LAWS

A. Hospital Clinical Privileges as a Means for Demonstrating Full-Time Work in a Hospital

There is a better solution than the Department's new proposed definition that would narrowly fix the unintended exclusion of California and Texas physicians who would otherwise be eligible for PSLF but for CPOM laws in their states. A significant flaw in the Department's approach is the attention given to contracting between physicians and private, nonprofit hospitals. While some physicians do enter service contracts with hospitals, as noted above, it is not necessary to do so to practice at the hospital. Instead, under California and Texas law, any physician who works in a private, nonprofit hospital is generally required to have been credentialed before providing medical services. *El-Attar v. Hollywood Presbyterian Med. Ctr.*, 56 Cal. 4th 976, 983 (2013) ("In order to practice at a hospital, a physician must be granted staff privileges"); *Garland Cmty Hosp. v. Rose*, 156 S.W.3d 541, 545-46 (Tex. 2004) ("The hospital's credentialing ... is necessary ...and an inseparable part of the health care rendered to patients"); Tex. Health & Safety Code 241.101(a) (discussing hospital credentialing committee); 25 TAC § 133.41 (f)(1), (4)(F), (6); Tex. Ins. Code 1452.052(2) (requiring public and private hospitals to use a standardized form to credential physicians). Having a contract with the hospital is uncommon and optional.

We believe the hospital authorization process (e.g., clinical privileges, credentialing) can be an accurate and verifiable means to demonstrating the PSLF statute's requirement that a physician is "employed in a public service job." The authorizing process includes assessing the qualifications and competency of a physician before permitting that physician to admit and see patients at the hospital. To be authorized to provide health care services at the hospital, medical staffs closely examine many factors determining a physician's qualifications and competence. This process is governed by the hospital's procedures and may include (1) verification of their training and residency; (2) checking their history of discipline by licensing bodies and other medical staffs; (3) running criminal record checks; (4) evaluating their medical malpractice record; (5) confirming specialty board certifications; (6) and conducting an overall assessment of competence and professional quality. California and Texas laws require physicians be reassessed and re- privileged on a continuous, ongoing basis.

B. Additional Certification Requirement for California and Texas Physicians

As noted above, relying on a W-2 form is not a workable solution for California and Texas physicians. Instead, we propose requiring California and Texas physicians to submit a signed, written certification from an authorized agent of their private, nonprofit hospital (a hospital CEO, chief medical officer, or medical staff executive) to verify eligibility for PSLF loan forgiveness. Specifically, the signed, written certification would have to verify that the physician has been granted hospital clinical privileges to work in the hospital (as outlined above) and works fulltime in the hospital (30 hours/week per the PSLF requirements), but the hospital cannot employ them because of state law.

This proposal for a signed, written certification is narrowly crafted to only apply to physicians in California and Texas — states that generally prohibit public service organizations from directly employing physicians. The certification option would not apply to any loan forgiveness applicant in any state that does not prohibit their employment by a qualifying public service organization. It also would not apply to any public service organization in any state that can directly employ a loan forgiveness applicant. In other words, our proposed signed, written certification requirement satisfies the Department's request for a solution that "does not expand the universe of qualifying employers but rather adjusts for whom a qualifying employer may sign a PSLF form." 87 Fed. Reg. at 41933.

C. Proposed Revisions and Additions to PSLF Regulation and Application Materials

Based on the foregoing discussion, we present California's and Texas' proposal to narrowly open eligibility for loan forgiveness under the PSLF Program only to physicians who work fulltime in private, nonprofit hospitals as follows.

1. Additional language for Section 685.219(b) following the definition of "employee or employed"

   If state law prohibits a public service organization from directly employing a licensed physician, eligibility for loan forgiveness can be demonstrated by a written certification signed by an authorized official of the public service organization (e.g., hospital CEO, chief medical officer, or medical staff director). The written certification must verify that the physician has been granted authority to work at the public service organization in a manner consistent with state law (e.g.., clinical privileges) and that the physician works fulltime, within the meaning of PSLF eligibility requirements, but is not able to be employed by the public service organization because of state law.

2. Additional language for PSLF Application Form materials

   <u>BORROWER REQUEST, UNDERSTANDINGS, AND CERTIFICATION</u>
   I understand that:

   - To qualify for loan forgiveness, I must be employed fulltime by a qualifying employer when I apply for and get forgiveness.

   - *For physicians who are prohibited from being employed by state law, to qualify for loan forgiveness, I must work fulltime at a private not-for-profit public service organization/qualifying employer when I apply for and get forgiveness.*

INSTRUCTIONS SECTION

EMPLOYMENT ELIGIBILITY

If state law prohibits a public service organization from directly employing a licensed physician, eligibility can be demonstrated by a written certification signed by an authorized official of the public service organization (e.g., hospital CEO, chief medical officer, or medical staff director). The written certification must verify that the physician has been granted authority to work at the public service organization in a manner consistent with state law (e.g., clinical privileges) and that the physician works fulltime, within the meaning of PSLF eligibility requirements, but is not able to be employed by the public service organization because of state law.

D. The Department's Authority to Adopt California's and Texas' Proposal

The foregoing proposed solution would fall within the Department's agency authority to adopt regulatory language that implements, but does not conflict with, the PSLF statute.

As noted, the PSLF statute makes loan forgiveness eligible to anyone "employed in a public service job." 20 U.S.C. §1087e(m). The statutory language "employed in" is not defined and must be interpreted by its plain meaning. To be sure, the statute does not specify who the employer must be other than one who meets the definition of a public service organization. More importantly, there is no statutory directive on how the applicant is engaged to work in the public service job. There certainly is no requirement that the applicant be in a legal employer/employee relationship with the public service organization. Rather, Merriam Webster Dictionary defines "employed" to mean "to make use of", "to use", or "to use or engage the services of." "Employ." *Merriam-Webster.com Dictionary*, Merriam-Webster, (accessed August 6, 2022). Any one of these definitions would meet the PSLF statutory requirement that an applicant be "employed in a public service job." Accordingly, the statutory requirement can have several alternative and reasonable interpretations, including that the individual works in a public service job or provides eligible services at or through an eligible public service organization.

It is well within the Department's rulemaking authority to further clarify and implement the statutory eligibility criteria that an applicant be "employed in" a qualifying job. As a preliminary matter, the Department can and has amended the eligibility criteria for the loan forgiveness program in the past via formal rulemaking. For instance, the Department made a change in Section 685.219(b)'s definition of "public service organization" to correct a drafting error and thus "clarif[y] the intended meaning of the regulations." 77 Fed. Reg. 76414 (December 18, 2012). The Department has also regularly clarified and/or changed the program rules following successive rounds of notice and comment. *See*, e.g., 80 Fed. Reg. 67204, 67225 (October 30, 2015); 85 Fed. Reg. 49798, 49805 (August 14, 2020). Exercising such rulemaking authority, the Department issued the PSLF regulation to give more precise definition to the term "employed in." The Department has established that "employee or employed means an individual who is hired and paid by a public service organization." 34 C.F.R. §685.219(b).

California's and Texas' proposal would not have the Department provide an alternative or additional definition for the statutory term "employed in." Rather, the proposal seeks only to add to the current regulatory clarification of what it means to be "employed in a public service organization." The proposal does not represent a reversal in policy. It is merely an incremental clarification as it applies narrowly to physicians who work at private, nonprofit hospitals in states such as California and Texas that are subject to a strong CPOM law prohibiting employment by hospitals. After all, such physicians cannot "choose" to be "hired and paid" directly by a hospital due to the existing law of their state. Our proposal also would not alter the meaning of "employee or employed" for any other class of individual. Finally, the proposed amendment does not conflict with the PSLF statutory term "employed in," as that term is not limited to legal employment relationships, and it follows the Department's regulatory goal of "not expand[ing] the universe of qualifying employers but rather adjust[ing] for whom a qualifying employer may sign a PSLF form." 87 Fed. Reg. at 41933.

We believe the Department's adoption of our proposed amendments to its PSLF regulation would pass muster under the Administrative Procedures Act. "Unless 'arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law,' or not supported by 'substantial evidence,' [courts] will uphold an agency's final order." *Rural Cellular Assn v. F.C.C.*, 588 F.3d 1095, 1105 (D.C. Cir. 2009) (citing 5 U.S.C. § 706(2)). "[A]rbitrary and capricious" review by a court focuses on the reasonableness of the agency's decision-making processes. The standard is very deferential. There need only be a 'rational connection between the facts found and the choice made.'" *Motor Vehicle Mfrs. Assn v. State Farm Mut. Ins. Co.*, 463 U.S. 29, 43 (1983) (internal citations omitted). As noted above, the PSLF statutory term "employed in a public service job" is susceptible to multiple reasonable meanings. It would <u>not</u> be "arbitrary and capricious" for the Department to further define such statutory terms in a way that furthers the purpose of the PSLF Program and does not conflict with the plain meaning of the statutory language.

III. CONGRESSIONAL SUPPORT FOR THE CALIFORNIA AND TEXAS PROPOSAL

Numerous members of Congress have underscored the need for fixing the inadvertent exclusion of California and Texas physicians who work full time in private, nonprofit hospitals but cannot be directly employed by their hospitals.

<u>In a March 1, 2016, letter, the bipartisan California Congressional delegation wrote to President Obama's Acting Secretary of Education John B. King, Jr. to assert the following points:</u>

> The PSLF Program is an important program that encourages individuals to pursue careers in public service and improves access to health care. However, unless changed, the Department's regulations from 2008 will deprive physicians who treat patients in nonprofit community hospitals in California from receiving student loan forgiveness for no reason other than they cannot be directly employed by certain hospitals under California state law. Their counterparts in 49 other states do not face this regulatory hurdle and in view of the unfairness of this situation, we encourage you to undertake whatever regulatory change is needed to solve this problem.

* * * *

> We are hopeful that you will agree that Congress did not intend to single out California physicians who treat patients at nonprofit facilities for disparate and unique treatment. …Those of us who voted for the legislation never contemplated that California physicians would be excluded from the program. We believe Congress intended all qualifying physicians in a public service job to be eligible for the program and look forward to working with you to correct this urgent problem.

Both the California and Texas congressional bipartisan delegations wrote a letter to current Secretary of Education Miguel Cardona on September 28, 2021. Relevant portions of this letter include:

> The narrow [2008] regulation places California and Texas at a severe disadvantage in recruiting new physicians and harms patient access to care in our underserved communities.
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> We urge you to update the PSLF regulations consistent with the statute and clarify that physicians who are currently prohibited from being employed directly by non-profit hospitals or other health care facilities are indeed eligible for loan forgiveness. Such clarification would put physicians in California and Texas on a level playing field with those in other states, which would help alleviate physician shortages in underserved areas. Those of us who voted for the legislation never contemplated that California and Texas physicians would be excluded from the program. We believe Congress intended all qualifying physicians who work in a public service non-profit hospital to be eligible.

Finally, on July 27, 2022, Secretary Cardona was sent a letter from key bipartisan members of the California and Texas congressional delegations that stated in relevant part:

> As the Congressional leaders on the California-Texas loan forgiveness issue, we write in response to the Department of Education's draft regulations published for the Public Service Loan Forgiveness (PSLF) program and urge you to include an immediate solution in the final regulation to ensure California and Texas physicians can participate. PSLF incentivizes individuals with student debt, especially frontline physicians, to enter high-demand fields and serve underserved communities. Since the letter from the California and Texas Congressional Delegations in September 2021, the Department has stated an interest in fixing the existing PSLF regulation that excluded California and Texas physicians from participating. Unfortunately, the most recent proposed draft regulation continues to exclude California and Texas physicians. We urge you to allow qualifying physicians who are prohibited by California and Texas state law from being employed by private, nonprofit hospitals, but meet all the other requirements of the PSLF program, to participate consistent with the way physicians in all other 48 states participate.
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> We urge the Department of Education to include the proposal set forth by the California and Texas physicians and hospitals that provides a California-Texas alternative to direct hospital employment for the final regulation. This proposal requires physicians, who work in states that prohibit their direct employment by qualifying hospitals, to submit a letter

of certification from the authorized hospital officials that the physician works fulltime at the nonprofit hospital or its clinics and has certified medical staff privileges to admit and treat patients in the facility.

We urge you to adopt a final regulation that includes California and Texas physicians. This fix would help to address these shortages in our underserved communities. Congress never intended to exclude physicians in two states. PSLF is a national program that should allow parity for all qualifying physicians in all 50 states.

IV. THE CRITICAL NEED TO EXPAND LOAN FORGIVENESS ELIGIBILITY TO CALIFORNIA AND TEXAS PHYSICIANS

A. Exclusion of Many California and Texas Physicians from PSLF is Exacerbating Physician Shortages and Harming Patient Access to Health Care.

California and Texas already have substantial physician shortages that make it difficult for patients to access timely medical care. While we applaud the Department's efforts to improve the overall PSLF Program so that more individuals can successfully participate nationwide, we fear that unless the California- Texas physician exclusion is addressed, our physician shortages will accelerate and our patient access to care challenges will grow demonstrably. We will be disadvantaged in recruiting and retaining young physicians in the future, as they may choose to practice in other states where they can obtain PSLF Program loan forgiveness for their substantial medical school debt.

With the median medical school student debt reaching a staggering $200,000, in addition to undergraduate education debt, the PSLF Program will be essential to helping more students become physicians to address the nation's significant physician workforce shortages, as well as encouraging physicians to practice in nonprofit hospitals and clinics in underserved urban and rural areas.

A recent study shows that California and Texas are projected to have the largest physician shortages in the nation over the next decade (Human Resources Health, February 2020). The report shows that these workforce shortages will be due to rapidly growing state populations, an increase in elderly and sicker patients, and an aging physician workforce without a commensurate increase in the number of physicians. More than one-third of active California physicians are over age 60 and within five years of retirement; half are over age 50. Similarly, in Texas, nearly 30% of active practice physicians are over age 60. Moreover, physicians over age 50 work fewer hours. The study shows that the projected shortages equate to 33,000 physician jobs in California and over 20,000 physician jobs in Texas during the next decade. **Lack of access to the PSLF Program is exacerbating such shortages and our ability to replenish the older physician workforce and keep pace with increasing health care demands.**

The specific data show even more glaring shortages of physicians in both primary care and specialty care in California and Texas. California faces a projected shortage of 4,100 primary care physicians over the next decade, according to a report from the California Future Health Workforce Commission and a shortage of 7,442 of primary care physicians is projected for Texas

by the Texas Department of State Health Services (Physician Supply and Demand Projections 2021-2032 (texas.gov).

Extending PSLF to California and Texas physicians practicing in private non-profit hospitals/clinics would provide a level-playing field for recruiting young physicians in all 50 states and help to improve access to care for patients. A career as a physician can be a rewarding profession but one that is generally mired with student loan debt. The AAMC reports that median medical school debt for the class of 2022 was $200,000. That number does not include their undergraduate debt, which can average nearly $30,000, according to the National Center for Education Statistics. Annual costs for medical students attending public institutions average nearly $40,000 and private institutions average $61,000, according to the AAMC. In addition, 68-89% of medical school graduates have education debt and 69% use loans to help pay for medical school, according to the AAMC. Because of the high cost of a medical education, most young physicians must obtain some form of assistance and loan forgiveness to cover their debt. PSLF is essential for these students.

PSLF is also important to improving access to health care in California's and Texas' underserved communities. The PSLF Program was established to not only help medical students afford their education, but to promote public service in nonprofit settings. California and Texas have some of the largest underserved health care regions in the nation, which makes the PSLF Program and its public health goals even more crucial for patients in our states. According to the U.S. Department of Health and Human Services, California and Texas have the most federally-designated Health Professional Shortage Areas (HPSAs) in the nation with 1,760 HPSAs in California and 154 primary care physician HPSAs in Texas.

Physicians practicing in these HPSAs or other low-income regions where most patients are uninsured or enrolled in the federal Medicaid program (which serves pregnant women, children, and low-income individuals, including the elderly, and disabled), receive reimbursements that can be 50% less than their physician counterparts practicing in other regions with different private sector payers. Therefore, incomes for physicians working in private, nonprofit community hospitals and clinics that tend to serve high numbers of Medicaid patients may be as low as 50% less than the state average. Physicians with lower salaries can take up to 20 years to repay their loans.

One-third of all Californians are enrolled in the Medicaid program, which makes access to physicians and hospitals particularly challenging across the state. In these high Medicaid regions, at least half the physicians leave after finishing their medical residency training, partly because of the low reimbursement and lack of access to the PSLF Program. Hospitals and medical groups located in these California communities report difficulty attracting and retaining physicians. In addition to the low reimbursement from public programs, the average stipend "salary" in a resident or fellow's first few years after medical school averages $57,863, according to the AAMC. And finally, California and Texas have some of the highest costs to operate a medical practice in the country based on office rents and staff wages, according to the 2022 Medicare physician fee schedule.

Inadequate reimbursement associated with taking care of large numbers of more fragile, medically complicated Medicaid and uninsured patients, low resident/fellow stipend "salaries," high practice costs, and the concurrent lack of PSLF in California and Texas have contributed to our physician shortages and jeopardize access to care. Physicians caring for patients in private, nonprofit hospitals in these underserved communities are the physicians we are urging the Department to make eligible for PSLF. Increasing access to the PSLF Program in California and Texas will allow more physicians and hospitals to be able to fully care for the patients who need them the most.

B. Extending the PSLF Program in California and Texas Would Promote Racial and Ethnic Equity in Education and Health Care.

California and Texas are two of the most racially and ethnically diverse states in the nation. We have the largest minority populations, according to the U.S. Census Bureau 2020. People of color make up 60% of California's population, particularly the Latinx population, and people of color make up 55.2% of Texas' population. However, according to EducationData.Org, there are still low percentages of California and Texas physicians and medical students of color.

The race/ethnicity of California physicians in active practice in 2020 was 33% white; 32% Asian/Pacific Islander; 6% Latinx; 4% Native American; 3% Black; 23% declined to state.

The race/ethnicity of California medical school graduates in 2019 was 33% white 33%; 34% Asian Pacific Islander; 8% Latinx; 6% Black; 16% other.
The race/ethnicity of Texas physicians in active practice in 2020 was 57% white; 7.6% Hispanic; 6.2% Black; 29% other.

The race/ethnicity of Texas medical school graduates in 2020 (public schools) was 43% white; 29% Asian/Pacific Islander; 17% Hispanic; 5% Black; 2.3% multi-racial; 3.4% unknown.

Clearly, we need a more diverse physician workforce to reflect the large minority populations residing in California and Texas. Studies show that patients are more likely to follow treatment plans from physicians who understand their race/ethnicity and culture. But as the data show, few minority students pursue careers in medicine and the high cost of medical school is frequently cited as a major barrier. Moreover, it is well- documented that minority communities have suffered significant access to care problems and health care disparities compared to their white counterparts because of a shortage of physicians.

The PSLF Program in California and Texas promotes more racial and ethnic equity in education. Racial and ethnic minority physicians in California and Texas, are more likely to have lower socioeconomic backgrounds and in need of assistance from the PSLF Program to cover their $200,000 plus in medical school debt. In fact, Education.Data.org shows that black medical students have an even higher median medical school debt — $240,000 — plus their undergraduate debt. Moreover, if more minority students in California and Texas were provided access to the PSLF Program, they could better afford to attend medical school and pursue careers in medicine. PSLF in California and Texas would help to bring more racial and ethnic equity to medical education and encourage a more diverse physician workforce.

PSLF in California and Texas encourages more racial equity in health care as well. PSLF would also help to bring more racial and ethnic equity to health care in California and Texas. Many minority physicians return to their neighborhoods and communities after medical school to practice medicine. These are usually underserved communities of color that have traditionally suffered from physician shortages and disparities in the way health care is delivered as shown by research studies. As discussed above, California and Texas have thousands of underserved communities in need of physicians. PSLF would allow more physicians, and particularly minority physicians, to better afford to practice in these areas. It would improve access to care for vulnerable, minority, and marginalized patients in private, nonprofit community hospitals in our states.

We implore the Department to provide access for California and Texas minority physicians to PSLF and to encourage California's and Texas' large numbers of minority students to pursue medical school. Because of California and Texas' large, racially and ethnically diverse populations, more PSLF eligibility in our states would help to bring more racial and ethnic equity to medical education and health care — a top priority for the Department and the Biden administration — that CMA, CHA, TMA, and THA strongly support.

C. The PSLF Program Must Provide Parity for Physicians, Hospitals, and Patients in All 50 States.

Physicians and hospitals in the nation's two largest states were unintentionally excluded from the national PSLF Program because of the Department's unnecessarily narrow interpretation of the PSLF statute. The unintended consequence is that it has placed California and Texas at a severe disadvantage in recruiting physicians, which harms access to patient care in our states' community hospitals, children's hospitals, and rural hospitals. The 2008 implementing regulations mandated that for PSLF eligibility nonprofit public service organizations (hospitals/clinics) must directly employ physicians. While California and Texas physicians may be members of their hospital medical staffs working full time in private, nonprofit public service organizations (community hospitals/clinics), and able to meet all PSLF eligibility requirements, state laws generally prohibit these hospitals from employing physicians. But for this legal prohibition, these California and Texas physicians would be eligible for loan forgiveness just as physicians in all other 48 states who similarly work in private nonprofit hospitals.

The inadvertent exclusion has discriminated against California and Texas and disadvantaged our physicians and hospitals and their ability to care for underserved patients. A continued exclusion will have a chilling effect on our ability to recruit new physicians to the state and maintain an appropriate physician workforce that can meet our growing future patient demands. It will create more racial and ethnic inequity in our physician workforce and more disparities in care for marginalized communities in two of the most racial and ethnically diverse states. The law was intended to promote higher education in all 50 states by reducing the debt burden, and to encourage public service in all 50 states. Therefore, California and Texas physicians should have equal access to this federal program and be treated equally under the program.

V. CONCLUSION

Thank you again for your willingness to solicit public comments on the California-Texas physician PSLF eligibility requirements and take action to resolve our issues. We appreciate the time the Department has taken to listen and consider our issues. We look forward to working with you to improve access to the PSLF Program in California and Texas with our proposed solution and additional eligibility requirements.

We urge the Department to ensure that California and Texas physicians, who are dedicated to caring for underserved patients and the public good, in private, nonprofit community hospitals and clinics, consistent with similarly situated physicians in other states, have access to this national loan forgiveness program. It will make a difference in improving educational opportunities, and access to health care for the vulnerable patients the PSLF program was intended to serve. The contact is Elizabeth McNeil, CMA at emcneil@cmadocs.org.

Sincerely,

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California Medical Association

Gary Floyd, MD, President
Texas Medical Association

Carmela Coyle, President & CEO
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Cc: The Honorable Speaker Nancy Pelosi
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