



January 25, 2022

Chiquita Brooks-LaSure, Administrator
Centers for Medicare and Medicaid Services
CMSAdministrator@cms.hhs.gov

Dear Administrator Brooks-LaSure,

The Clinical Social Work Association and Psychotherapy Action Network want to commend CMS for establishing the rules on the No Surprises Act. The NSA offers greatly needed protections for those who require emergency services, non-emergency services from nonparticipating providers at participating facilities, and air ambulance services from nonparticipating providers of air ambulance services. We applaud the Act's related requirement that insurers maintain adequate networks and regularly check the accuracy of their in-network provider lists.

We and the undersigned have specific concerns about behavioral health providers who are in private practice and do not work in emergency rooms that are nonetheless required to comply with giving a Good Faith Estimate to all self-pay and uninsured patients.

For your information, the Clinical Social Work Association (CSWA) represents the interests of the over 250,000 clinical social workers in the USA, with 16 Affiliated Societies and close to 1000 individual members. The Psychotherapy Action Network (PsiAN), with a membership of over 4200 individuals and 80 partner organizations, represents clinicians across all disciplines and other stakeholders who seek to protect access to needed treatment for complex disorders. We are joined in these concerns by the American Association for Psychoanalysis in Clinical Social Workers, the American Group Psychotherapy Association, the [American Mental Health Counselors Association](#), the American Psychoanalytic Association, the California Psychology Internship Council, the Confederation of Independent Psychoanalytic Societies, and the Illinois Affiliation of Marriage and Family Therapists.

We ask that you review the Act's inclusion of private practice behavioral health clinicians who do not work in emergency rooms. There have been extremely few actionable complaints about surprise billing by behavioral health clinicians who work privately. We sincerely hope after hearing our concerns that you will consider exempting independent behavioral health clinicians from providing the Good Faith Estimate to our patients.

Our concerns are as follows:

- The Good Faith Estimate (GFE) created by the NSA requires cost, treatment plans, and length of treatment information that is very similar to the Informed Consent we already provide to our clients in accordance with our various professional Codes of Ethics and state licensure laws. The diagnosis and length of treatment cannot be estimated until the therapist has an understanding of the patient, which can take several sessions. It is an ethical violation for mental health clinicians to diagnose and treat without a complete evaluation.
- Patients who receive a mental health diagnosis often have anxiety about being labeled. When and how a diagnosis is addressed during treatment can make a significant difference in how successfully a client accepts help. Many clients see a private practice psychotherapist because they prefer not to have a formal diagnosis, a factor that mental health clinicians take into account.
- Many patients, as well, are concerned about the lack of confidentiality that will result if insurers are allowed access to the information in the GFE. A major reason patients choose an out-of-network provider is to have as much privacy as possible.

For all the above reasons, we request that CMS and HHS exempt independent behavioral health practitioners from compliance with the GFE.

Thank you for your attention to this issue. We would be happy to discuss it further.

Sincerely,

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Organizations in Support:

American Association for Psychoanalysis in Clinical Social Workers
American Group Psychotherapy Association
American Mental Health Counselors Association
American Psychoanalytic Association
California Psychology Internship Council
Clinical Social Work Association
Confederation of Independent Psychoanalytic Societies
Illinois Affiliation of Marriage and Family Therapists
Psychotherapy Action Network

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