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Congress of the United States
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COMMITTEE ON FOREIGN AFFAIRS
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December 23, 2021

The Honorable Xavier Becerra
Secretary of Health and Human Services
U.S. Department of Health and Human Services
200 Independence Ave, SW
Washington, DC 20201

Dear Secretary Becerra:

Members of Congress have a responsibility to conduct oversight of the executive branch to ensure that legislation is being implemented in a manner that avoids creating unnecessary confusion or burdens for those required to comply with federal law as well as those for whom the law is intended to protect or assist.

On October 7, 2021, the Department of Health and Human Services published an interim final rule (86 FR 55980) providing for implementation of provisions of the No Surprises Act (enacted as part of the Consolidated Appropriations Act of 2021). One section of the rule concerns a requirement for providers to provide good faith estimates of expected charges for uninsured/self-pay patients. Unlike the surprise billing provisions, this requirement appears to apply to virtually all health care providers.

Unfortunately, the sweeping nature of the regulation has led to significant confusion among providers whose practices may not easily fit within the parameters of the good faith estimate. Providers have conveyed to me their concerns that the one-size-fits-all good faith estimate requirement could impose substantial difficulties on their practices and hinder their ability to provide appropriate care for patients.

Mental health providers are especially concerned that the requirement to provide a good faith estimate within one business day could force them to make a premature diagnosis of a client and provide an estimate of the number of sessions required for treatment. For example, one of the uncertainties with mental health counseling services is that the number of recurring sessions necessary to treat a patient is contingent on many factors that may not be immediately apparent at the outset and may change over time.

I request that you provide complete responses to each of the following questions no later than January 7, 2022:

1. Please provide a clear description of the regulated class of providers who will be subject to the good faith cost estimate requirement provisions of this rule.
2. Many of the providers that would be affected under this law already provide cost information through other forms of disclosure and consent before furnishing services. Would such existing price transparency measures suffice for compliance?

3. Have you considered alternative measures to satisfy the cost estimate requirement for private providers who work with uninsured or self-pay clients and already supply cost information in advance as a matter of practice?
4. How does the good faith estimate requirement apply to recurring services that can be scheduled separately, such as therapy sessions that may vary depending on individual assessments and responses to treatment? Would each individual requestable session require a cost estimate, or would the entire anticipated course of treatment/therapy require a single cost estimate?
5. Is a diagnosis of a patient's condition required for provision of a cost estimate? Given that multiple sessions may be required to thoroughly assess and accurately diagnose a patient seeking mental health services, some providers have expressed concern that the good faith cost estimate requirement could force them to provide an estimate of the number and type of sessions required to treat a patient before a diagnosis has been made, which creates an ethical dilemma for providers.
6. Many clients electing to pay out of pocket for private mental health services do so to avoid having a diagnosis on record. Have you considered a workaround that allows clients the ability to continue to choose this route without involving a diagnosis or the client's insurance?
7. Are providers required to ask for insurance cards and verify costs if someone wants a receipt to file out of network? Some providers have expressed concerns about the sudden administrative burden of this as well as the lack of working knowledge with managed care, and the potential liabilities this could create.

I request that you work with Congress and affected health care providers to provide clarity and appropriately tailor implementation of federal law to ensure that efforts to encourage price transparency do not impose unnecessary and intrusive requirements on health care providers that serve uninsured or self-pay clients. Specifically, I would request that HHS issue additional rulemaking or guidance to accommodate providers who are already providing cost disclosure to their patients through other means such as informed consent documents and other initial patient paperwork.

Sincerely,

Mark E. Green, M.D.
Member of Congress