



December 6, 2022

Chiquita Brooks-LaSure
Administrator
Centers for Medicare and Medicaid Services
200 Independence Avenue S.W.
Washington, D.C., 20201

Request for Information; National Provider Directory for Healthcare Providers & Services (File No. CMS-0058-NC)

Dear Administrator Brooks-LaSure,

On behalf of the American Psychological Association (APA)¹, we respectfully submit the following response to your October 7, 2022 [Request for Information \(RFI\)](#) concerning a National Directory for Healthcare Providers & Services (NDH) that would serve as a “centralized data hub” for inquiries about practitioners and services across the health care system.

We appreciate CMS’ intent to develop an NDH that would improve patients’ ability to find providers and alleviate unnecessary administrative burdens on practitioners. Both problems are severe in mental/behavioral health care, due to the crushing needs created by the pandemic and other stresses on Americans.² We hope that our response to this RFI will help CMS achieve both goals by shaping an NDH that is easy for consumers and providers to use, and that gives consumers critical information to find a behavioral health provider that best meets their particular needs. APA would support an NDH that accomplishes this.

In response to the many questions presented in the RFI, APA’s key recommendations for the NDH are:

- Psychologists³ should be included and prioritized participants in the NDH to help patients who are struggling to find timely and appropriate mental/behavioral health care.

¹ APA is the nation’s largest scientific and professional nonprofit organization representing the discipline and profession of psychology, as well as over 133,000 members and affiliates who are clinicians, researchers, educators, consultants, and students in psychological science. For its part, APA Services, Inc. promotes the mutual professional, scientific, and training interests of psychologists including advancing psychology’s roles and interests in understanding behavior and advancing health, science, education, and human welfare.

² See, e.g., American Psychological Association, *Stress in America 2022: Concerned For the Future*, Beset by Inflation (Stress in America)(October 2022), available at: <https://www.apa.org/news/press/releases/stress/2022/concerned-future-inflation>.

³ Including other mental/behavioral health professionals in the NDH would probably be advisable as many of the concerns about psychology that APA expresses in this letter apply to those professions as well. APA, however, does not presume to speak for those other professions.



- Increase the granularity of provider data to better enable patients to connect with professionals who will meet their needs, including clearer data on how available a psychologist may be.
- The NDH should focus on ease of use to encourage behavior health provider participation, including an easy-to-use web portal for the collection, updating and verification of provider information for our many members who do not have interoperable EHR systems.

We also urge CMS to address some concerns that we have about the NDH. These include safety concerns about psychologists' home addresses being public, and misuse of NDH provider data by unscrupulous organizations. Addressing these concerns as we suggest below will foster greater participation by psychologists in this important project.

I. CMS should include, and find ways to encourage, psychologists' participation in the NDH.

Patients' access to behavioral health care services continues to be challenging, and has been exacerbated by the COVID-19 pandemic and other stressors.⁴ Inaccurate and inadequate provider directories add to this challenge; patients report calling large numbers of mental health providers listed in a network⁵ only to find that almost no listed provider is available to take on new patients and/or that available providers do not handle their particular age group or diagnosis.⁶ These deficiencies are a clear signal that payers are not meeting network adequacy standards under the mental health parity law and other relevant laws.⁷

Our leaders and members report that large numbers of psychologists left commercial networks because of continued low reimbursement, which is frequently lower than comparable physical

⁴ See generally, Grayson Schmidt, *Here's Why Everyone Should Be Talking About Mental Health Care in 2020*, Shondaland (Jan. 22, 2020), <https://www.shondaland.com/act/news-politics/a30614644/mental-health-care/> [<https://perma.cc/Q7BX-PSVD>]; See also, *Stress in America* at fn. 2; American Psychological Association, *Inflation, war push stress to alarming levels at two-year COVID-19 anniversary*, (March 10, 2022), <https://www.apa.org/news/press/releases/2022/03/inflation-war-stress> (discussing the results of a poll conducted the reveals additional stressors including inflation, money issues, the war in Ukraine, and more)

⁵ See, e.g., Katherine Ellison, *73 doctors and none available: How ghost networks hamper mental health care*, The Washington Post, (February 19, 2022, 9:00 a.m.) <https://www.washingtonpost.com/health/2022/02/19/mental-health-ghost-network/>; Lisa Gutierrez & Jonathan Shorman, *Kansas Woman Tried to Get Help, but Insurance Denied It. Then She Overdosed and Died*, Kan. City Star, (Jan. 13, 2020, 5:00AM), <https://www.kansascity.com/news/business/health-care/article239014028.html> [<https://perma.cc/3BTv-4W2X>] [Have long heard about patient calling 10 providers. Recently heard of a patient who called 100.]

⁶ A study done on Oregon's Medicaid managed care organizations found that 58.2 percent of network directory listings were "phantom" providers who did not see Medicaid patients, including 59 percent of mental health non-prescribers. See *Phantom Networks: Discrepancies between Reported and Realized Mental Health Care Access in Oregon Medicaid*, available at: <https://www.healthaffairs.org/doi/10.1377/hlthaff.2022.00052>

⁷ Valarie Blake, *Narrow Networks, the Very Sick, and the Patient Protection and Affordable Care Act: Recalling the Purpose of Health Insurance and Reform*, 16 Minn. J. L. Sci. & Tech. 63, 95 (2015) (noting that behavioral health providers "have historically raised network adequacy concerns".)

health care,⁸ and high administrative hurdles, combined with a huge demand for services.⁹ Many of our members report that their already low reimbursement rates from insurance companies have not increased in 10-15 years, nor have they received any increase in reimbursement relative to higher costs of living.¹⁰ While some payers simply failed to pay and treat psychologists better to maintain a strong network, others have intentionally crafted narrow networks as a method of containing costs.¹¹

The combination of these factors also means that behavioral health services are much more likely than general medical services to be delivered by an out-of-network provider. Accordingly, we recommend that the NDH be open to the many psychologists who are not within any payer network, so that they can be reached by consumers stuck with inadequate mental health networks through their existing coverage.

II. Benefits for including Psychologist’s Participation in NDH

In the RFI, CMS seeks comments on whether a centralized directory would make it easier for patients to identify, compare, and locate providers who meet their specific needs and preferences. We believe that a properly designed NDH would accomplish this goal. A centralized NDH that includes all psychologists—those who participate in insurance networks along with those who do

⁸ See generally, Wa Jane M. Zhu, Yuehan Zhang & Daniel Polsky, *Networks in ACA Marketplaces Are Narrower for Mental Health Care Than for Primary Care*, 36 HEALTH AFFS. 1624, 1627 (2017) (Study reporting disproportionately low rates of network participation among behavioral health care providers compared to primary care physicians).

⁹ Many psychologists already spend many hours per week doing administrative work and find it impractical to jump through more hoops to receive insurance reimbursements. See, e.g., Ron Honberg, Sita Diehl, & Dania Douglas, *Nat’l All. On Mental Illness, A Long Road Ahead: Achieving True Parity in Mental Health and Substance Use Care* 1-2, 3 (2015), available at: <https://www.nami.org/Support-Education/Publications-Reports/Public-Policy-Reports/A-Long-Road-Ahead/2015-ALongRoadAhead> [<https://perma.cc/VWD8-DAYS>] (listing a survey’s findings about numerous barriers to obtaining mental health care, including finding in-network mental health care providers, high rates of insurance denials, high out-of-pocket costs, and others).

¹⁰ Despite the passage of MHPAEA over a decade ago, a recent report from the Department of Labor indicates that, despite recent enhanced enforcement efforts, “[h]ealth plans and insurance companies are falling short of providing parity in mental health and substance-use disorder benefits.” U.S. Department of Labor (January 2022), 2022 MHPAEA Report to Congress, <https://www.dol.gov/sites/dolgov/files/EBSA/laws-and-regulations/laws/mental-health-parity/report-to-congress-2022-realizing-parity-reducing-stigma-and-raising-awareness.pdf>. See also, Stephen Melek, Stoddard Davenport, & T.J. Gray, *Addiction and Mental Health vs. Physical Health: Widening Disparities in Network Use and Provider Reimbursement* citing strong evidence of reimbursement disparity. See also, Nicole M. Benson & Zirui Song, *Prices and Cost Sharing for Psychotherapy in Network Versus out of Network in the United States*, 39 Health Affs. 1210, 1215 (2020). We emphasize that APA wants to improve conditions so psychologists will participate in networks; we share the view of many of our members that it’s vital to serve the millions of Americans who must rely on their health insurance to cover their mental health care.

¹¹ Consumers are frequently encountering narrow network options on the individual market and through employer-based coverage. See Tracy Anderman, *What to Know About Narrow Network Health Insurance Plans*, Consumer Reps. (Nov. 23, 2018), <https://www.consumerreports.org/health-insurance/what-to-know-about-narrow-network-health-insurance-plans/> [<https://perma.cc/K8K2-UBB4>] (indicating that one in five plans sold on ACA health exchanges and one third of Medicare Advantage plans have narrow networks, and 18% of companies with five thousand employees “offer at least one narrow network plan”); Jane M. Zhu, Yuehan Zhang & Daniel Polsky, *Networks in ACA Marketplaces Are Narrower for Mental Health Care Than for Primary Care*, 36 Health Affs. 1624, 1625 (2017) (describing insurers’ increased use of “narrow networks” as a cost-cutting measure).



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not participate in any insurance networks—could vastly improve access to behavioral health services for consumers having difficulty finding an in-network psychologist for the care they need.

We also think, if implemented with provider and patient needs in mind, this directory could illuminate and potentially reform many systemic issues that contribute to insurance networks' paucity of psychologists. For example, a centralized NDH that listed out-of-network (OON) providers would shed light on a common response made by commercial insurers accused of inadequate mental health networks. These insurers often claim that the inadequacy is due to a shortage of providers rather than the company's failure to retain providers by paying and treating them well. If the NDH showed an ample number of OON providers, regulators could see the falsity of such responses.

A centralized directory would make it easier for consumers to identify, compare, and locate providers who meet their specific needs and preferences. This is particularly true because psychology has sought to address localized shortages through an interstate compact allowing patients and psychologists to connect through telehealth across 34 states.¹² The NDH could be a very effective means of connecting the millions of patients in those states with a psychologist well-suited to address their unique needs and preferences, including rare conditions, language needs, and cultural competency. These are additional reasons for including psychologists in the NDH.

Incentivizing and encouraging psychologist participation in a national directory would make it easier for patients to identify and compare providers who fit their specific needs who may not be in their current insurers network. The many psychologists who choose not to participate in payer networks may be incentivized to join the NDH as a way of improving their visibility for potential patients. For those behavioral health practitioners that are in-network, especially if in-network with multiple payers, a centralized system could reduce unnecessary burdens placed on participating providers who must update their information on multiple payers' separate directories.

III. Scope of NDH Data Elements and Public Accessibility

To the questions in the RFI concerning the types of data that should be collected for an NDH, APA expresses support for prioritizing data elements that will enable patient choice and transparency in health care.

- *Provider availability and flexible categories for availability status*

In addition to general contact information for a provider as being essential for connecting patients with providers, provider availability is a key element that is missing or inadequate in most current directories. A list of providers is useless to consumers unless consumers know whether such providers have the capacity to provide the necessary care.

¹² <https://psypact.site-ym.com/page/psypactmap> See also <https://psypact.site-ym.com/page/About>.



While some directories do indicate whether a provider is available or not available to see new patients, we believe that a middle category of “limited availability” adds important value.¹³ Given the high demand for their services, “limited availability” is a much more common description of mental/behavioral health service providers’ availability¹⁴ and a more accurate representation to consumers. It signals to consumers that a psychologist may have only a few time slots available, which may become filled soon after the psychologist announces their availability. It also reflects that many psychologists have the flexibility to accept one or two more patients to their patient load if a patient has an issue that matches their particular expertise. This approach gives psychologists more power to direct limited remaining time to patients who could most benefit from their skills. By contrast, a binary “available/not available” data point may incorrectly suggest that a provider is available to take patients for any and all services.

- *Other important data elements that may help patients find a psychologist most suited to their needs:*

To optimize a patient’s ability to locate a mental health professional who best meets their particular needs and preferences, we recommend including granular information like those in the following list, which would be searchable in the NDH.¹⁵ For most items, it should be left to the provider’s discretion whether to report them:

- Hours of operation, including weekend or evening availability;
- Participation in commercial or government insurer networks (or not);
- Provider technology capabilities facilitating patient communications;
- State(s) in which the provider is licensed or authorized to offer services, the latter category covering interstate licensure compacts;
- Authorization to provide telehealth services in additional states beyond states of licensure¹⁶;
- Specialty or subspecialty;
- Treatment modalities offered;
- Optional demographic information the provider may want to offer in the interest of health equity/underserved populations such as race, age, ethnicity, LGBTQ+, religion, etc.;

¹³See p. 5, 2nd bullet list, of 2020 report of a Massachusetts Provider Directory Task Force <https://www.mass.gov/doc/provider-directory-task-force-report-2020/download>. That the task force was created under state law to develop recommendations for insurers’ provider directories. see [Provider Directory Task Force | Mass.gov](#).

¹⁴ For example, according to APA’s most recent data, demand remains high for mental and behavioral health services, with notably increased demand for treatment of anxiety disorders (79%), depressive disorders (66%), and trauma-related and stressor-related disorders (64%). As a result, 60% of psychologists reported that they have no openings for new patients, and nearly four in 10 psychologists (38%) maintained a waitlist.

¹⁵ Many of these items are from p. 5 of Mass. task force report, see *supra* fn. 15.

¹⁶ See, *supra*, fn. 14 and associated discussion concerning PSYPACT.



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- Populations served such as adults, teens, children, couples, families, LGBTQ+, ASD, etc.¹⁷; and
- Languages spoken.

Accessibility. When considering which data elements to collect—and of those, which to publicly display—CMS should ensure that the information is meaningful and usable for as many consumers as possible.

- *Public and other access concerns creating barriers to participation.*

Flexibility to opt out: Some providers may not feel comfortable disclosing all these data points. To encourage participation in the NDH, providers should be given the choice to opt-in or out of any data collection and public disclosure requirement. Therefore, the public availability of NDH data should be strictly limited only to information the provider specifically sanctioned for public disclosure such as the provider's name.

Safety: CMS must also consider provider safety and privacy when determining what contact information a provider can designate as non-public. This is especially a concern amongst those psychologists who shifted to telehealth services during the pandemic. Because patients who may become dangerous are often a concern in mental health, psychologists should have the option not to list their office address if it is a home office.

Misuse of public provider information by unscrupulous commercial interests: Last summer, our members were outraged by a company that monetized government provider data at the expense of both the provider and patient. Addressing this concern as suggested below will reduce psychologist anxiety about participating in an NDH. The company at issue used publicly accessible NPI data to generate unauthorized profiles of providers to display on the company's own website. It used those profiles to attract the attention of patients searching for treatment by telling prospective patients the profiles can be used to contact the provider they describe. When patients visit these profiles, however, they are told that the provider does not offer a means to schedule an appointment online through the site, and instead are redirected to another provider or service that may not be evidence-based and may not have the expertise the patient requires. The service then pays a fee or commission back to the referring site.

Such unauthorized use of provider data serves no public interest, but rather creates an industry built on a false pretext that an actual provider recommends or endorses the services offered through the site. Unless the provider "claims" their profile on the site, the profiles are not reviewed or edited for accuracy. Moreover, the company refuses to remove provider profiles. This irreparably

¹⁷ Although topics covered may overlap, we believe that both the self-reporting and "populations served" data points their advantages. For example, some patients prefer someone who shares their "lived experience" and/or cultural values; In some areas psychologists may not feel it is safe or wise to report their LGBTQ+ status or they may just wish to maintain privacy; Finally, in some situations, there may be no available psychologists from a particular group in the patient's area, or who takes the patient's insurance, thus a psychologist who *treats* a particular population may be the best option available.



harms the business and reputation of providers, and places them in an unwinnable scenario—either they claim the profile and make edits themselves, and risk becoming associated with a site they do not endorse, or they can do nothing and continue to allow false and outdated information about their services to remain public and unchallenged. Inaccurate information listed on websites about providers negatively impact providers’ businesses, as well as patients’ access to appropriate health treatment. From the patient’s perspective, this business practice diverts patients seeking critical mental and behavioral health treatment towards services that may not be evidence-based and may not meet their needs.

We hope that CMS’ consideration of the solutions offered below will reduce the risk of the company at issue (or other companies following their example) misusing NDH data and discouraging participation.

Reporting of certain misleading performance measures: The RFI asks “what benefits and challenges might arise while integrating data from CMS systems (such as NPES, PECOS, and Medicare Care Compare) into an NDH?” We have a specific concern with Medicare Care Compare data, which includes Merit-based Incentive Payment System (MIPS) data that may make consumers think that psychologists and other behavioral health professionals appear to be poor performers, when the problem is really that most MIPS measures are centered on medical care, and there are few measures applicable to psychologists.

- *Solutions to encourage provider confidence and participation:*

Robust policies, procedures, and practices for maintaining security and privacy is imperative to encourage provider participation. To limit the ability of unscrupulous actors to monetize this data, APA recommends:

- A CAPTCHA test¹⁸, or similar, must be deployed to prevent data extraction from computer programs such as bots, crawlers, or spiders that many companies use to obtain a significant amount of information from a website’s server.

- We recommend that CMS ensure that the Terms and Conditions for use of the website prohibit the unauthorized extraction and distribution of data. Compliance with web use Terms and Conditions should be required, and CMS should commit to taking appropriate and consistent enforcement action when violations are detected.

IV. *Interoperability of NDH Data Key considerations related to data submission and potential NDH development*

¹⁸ A CAPTCHA is a simple test used on many websites to identify whether a user trying access website data is a human or a bot. CAPTCHA stands for “Completely Automated Public Turning Test to tell Computers and Humans Apart” and is a useful tool that discourages spam, data scraping, and other unwanted website access.



- *Develop a centralized web-based portal where the necessary data points can be submitted, stored, and frequently updated for those practitioners who have the capacity to use a web-based portal.*

To incentivize provider use and participation in this directory, the process for inputting, updating, and attesting to provider profile information needs to be simple, convenient, and electronically accessible.

Many behavioral health professionals are in small and independent practices that do not have interoperable Electronic Health Record (EHR) systems and will not likely have them at least for the near future. The financial costs of implementing and maintaining EHR systems have been a major barrier to their adoption.¹⁹ To incentivize the adoption of these systems, certain medical providers and facilities were offered incentive funding for using an EHR system under the Health Information Technology for Economic and Clinical Health Act of 2009 (HITECH Act).

Unfortunately, behavioral health practitioners were excluded from federal assistance provided under the HITECH Act²⁰, contributing to why many behavioral health practitioners have not invested in sophisticated EHR systems.²¹ Many psychologists—particularly those that operate in rural and underserved areas, or outside of established health systems—simply do not have the resources, technical capabilities, to purchase and operationalize an interoperable, certified EHR system.

To encourage participation of behavioral health practitioners without sophisticated technical capabilities or systems who seek to be listed in the NDH, alternative means of querying and sending up-to-date provider information is necessary. For practitioners with internet capabilities, we recommend that CMS create an easy-to-use web-based portal. That portal would be used for querying and sending up-to-date provider information.

Still, a significant portion of our membership, especially senior and rural practitioners, are not likely to use a user-friendly web-based portal and will require a lower tech means such as fax or phone verification for inputting and validating their data should they desire to be listed on the NDH.

¹⁹ Kruse CS, Kothman K, Anerobi K, Abanaka L. Adoption factors of the electronic health record: a systematic review, *JMIR Med Inform*. (June 2016) available at: <https://medinform.jmir.org/2016/2/e19/>.

²⁰ The HITECH Act of 2009 (P.L. 111-5) excludes psychologists and most other non-physician providers from receiving funding to adopt electronic health record technology. See also, Bipartisan Policy Center, *Integrating Clinical and Mental Health: Challenges and Opportunities* (January 2019) (Report noting the lag in adoption of electronic health record systems for mental health providers). <https://bipartisanpolicy.org/wp-content/uploads/2019/01/Integrating-Clinical-and-Mental-Health-Challenges-and-Opportunities.pdf>.

²¹ Study finding that large increase in EHR adoption can be attributed specifically to HITECH. Julia Adler-Milstein and Ashish K. JHA, Health Affairs, HITECH Act Drove large Gains in Hospital Electronic Health Record Adoption, (August 2017), available at <https://doi.org/10.1377/hlthaff.2016.1651>.



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- *Any approach, to be effective in encouraging participation, must be easy to use and focused on reducing, and not adding to, the administrative burdens that currently plague psychologists.*

Our members have expressed concern about the time, expense, and financial impact of operationalizing new administrative processes along with implementing EHR systems or upgrading current technologies. Notably, the dominant concern is that the use of new systems and/or processes would reduce the amount of time practitioners can allocate to seeing patients – ultimately reducing the number of patients that practitioners can see each day.

Conclusion

Thank you for your consideration of our response. APA appreciates the Administration's efforts to alleviate unnecessary administrative burdens on psychologists and improve consumers' ability to find the right mental health care. We welcome an opportunity to help guide these efforts in a positive and productive direction. If you have any questions or require any further resources, please contact Andrew Strickland, J.D. at astrickland@apa.org or Rachael Soule, J.D. at RSoule@apa.org.

Sincerely,

Katherine B. McGuire
Chief Advocacy Officer
American Psychological Association Services, Inc.

A handwritten signature in black ink, reading "Jared L. Skillings". The signature is written in a cursive, flowing style with a long, sweeping underline.

Jared L. Skillings, PhD, ABPP
Chief of Professional Practice
American Psychological Association Services, Inc.