

**SUPPORTING STATEMENT FOR PAPERWORK REDUCTION ACT 1995:
OPT-IN STATE BALANCE BILL PROCESS**

This ICR seeks approval for an extension of an existing control number.

A. JUSTIFICATION

1. Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate the collection. Attach a copy of the appropriate section of each statute and regulation mandating or authorizing the collection of information.

The No Surprises Act was enacted as part of the Consolidated Appropriations Act, 2021 (Pub. L. 116-260). The interim final rules allow plans to voluntarily opt in to state law that provides for a method for determining the cost-sharing amount or total amount payable under such a plan, where a state has chosen to expand access to such plans, to satisfy their obligations under section 9816(a)-(d) of the Code, section 716(a)-(d) of ERISA, and section 2799A-1(a)-(d) of the PHS Act. A plan that has chosen to opt into a state law must prominently display in its plan materials describing the coverage of out-of-network services a statement that the plan has opted into a specified state law, identify the state (or states), and include a general description of the items and services provided by nonparticipating facilities and providers that are covered by the specified state law.

2. Indicate how, by whom, and for what purpose the information is to be used. Except for a new collection, indicate the actual use the agency has made of the information received from the current collection.

The interim final rules allow plans to voluntarily opt into state law that provides for a method for determining the cost-sharing amount or total amount payable under such a plan, where a state has chosen to expand access to such plans, to satisfy their obligations under Code section 9816(a)-(d), ERISA section 716(a)-(d) and PHS Act section 2799A-1(a)-(d). Thus, the interim final rules require that plans that have chosen to opt into a state law must prominently display in its plan materials about the emergency services and/or out-of-network services covered by the specified state law. This requirement helps ensure that plan participants and beneficiaries are aware of these protections.

3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses, and the basis for the decision for adopting this means of collection. Also describe any consideration for using information technology to reduce burden.

The regulation does not restrict plans or issuers from using electronic technology to provide either disclosure. The Department of Labor’s regulations under 29 C.F.R. § 2520.104b-1(b) provides that, “where certain material, including reports, statements, notices and other documents, is required under Title I of the Act, or regulations issued thereunder, to be furnished either by direct operation of law or on individual request, the plan administrator shall use measures reasonably calculated to ensure actual receipt of the material by plan participants, beneficiaries and other specified individuals” Section 29 CFR 2520.104b-1(c) establishes the manner in which disclosures under Title I of ERISA made through electronic media will be deemed to satisfy the requirement of § 2520.104b-1(b). Section 2520-107-1 establishes standards concerning the use of electronic media for maintenance and retention of records. Under these rules, all pension and welfare plans covered under Title I of ERISA may use electronic media to satisfy disclosure and recordkeeping obligations, subject to specific safeguards.

4. Describe efforts to identify duplication. Show specifically why any similar information already available cannot be used or modified for use for the purposes described in Item 2 above.

The No Surprises Act, which was enacted as part of the Consolidated Appropriations Act, 2021 (Pub. L. 116-260) (December 27, 2020). The No Surprises Act and these interim final rules amend and add provisions to existing rules under the Internal Revenue Code, the Employee Retirement Income Security Act, and the Public Health Service Act. However, only the Department of Health and Human Services has jurisdiction over state and local government plans and individual market plans and the Department of Labor oversees ERISA-covered group health plans. Thus, there will be no duplication of effort with HHS.

5. If the collection of information impacts small businesses or other small entities describe any methods used to minimize burden.

The interim final rules require that a plan that has chosen to opt into a state law must prominently display in its plan materials a statement describing the coverage of emergency services and/or out-of-network services a statement and that the plan has opted into a specified state law, identify the state (or states), and include a general description of the emergency services and/or services provided by out-of-network facilities and providers that are covered by the specified state law. The Department has not proscribed the specific format for that information allowing plans to use materials already on hand to satisfy or else compose the notice. This requirement could not be waved for small businesses as participants need to be notified of their rights in order to be notified of the protections and utilized the provided protections. Also, this requirement is

at the discretion of the plan providing them with flexibility and choice.

6. Describe the consequence to Federal program or policy activities if the collection is not conducted or is conducted less frequently, as well as any technical or legal obstacles to reducing burden.

Without the required notice, there would be inadequate consumer protections related to balance billing for individuals enrolled in group health plans. Consumers would not be notified of their protections and rights, and less likely to minimize the amount of a balance bill.

7. Explain any special circumstances that would cause an information collection to be conducted in a manner:

- **requiring respondents to report information to the agency more often than quarterly;**
- **requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it;**
- **requiring respondents to submit more than an original and two copies of any document;**
- **requiring respondents to retain records, other than health, medical, government contract, grant-in-aid, or tax records for more than three years;**
- **in connection with a statistical survey, that is not designed to produce valid and reliable results that can be generalized to the universe of study;**
- **requiring the use of a statistical data classification that has not been reviewed and approved by OMB;**
- **that includes a pledge of confidentiality that is not supported by authority established in statute or regulation, that is not supported by disclosure and data security policies that are consistent with the pledge, or which unnecessarily impedes sharing of data with other agencies for compatible confidential use; or**
- **requiring respondents to submit proprietary trade secret, or other confidential information unless the agency can demonstrate that it has instituted procedures to protect the information's confidentiality to the extent permitted by law.**

There are no special circumstances that require the collection to be conducted in a manner inconsistent with the guidelines in 5 CFR 1320.5.

8. If applicable, provide a copy and identify the date and page number of publication in the Federal Register of the agency's notice, required by 5 CFR 1320.8(d),

soliciting comments on the information collection prior to submission to OMB. Summarize public comments received in response to that notice and describe actions taken by the agency in response to these comments. Specifically address comments received on cost and hour burden.

Describe efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported.

Consultation with representatives of those from whom information is to be obtained or those who must compile records should occur at least once every 3 years -- even if the collection of information activity is the same as in prior periods. There may be circumstances that may preclude consultation in a specific situation. These circumstances should be explained.

The Department's notice required by 5 CFR 1320.8(d), which provided the public with 60 days to comment on the information collection, was published in the Federal Register on November 9, 2021 (86 FR 62206). No comments were received related to the ICR.

- 9. Explain any decision to provide any payment or gift to respondents, other than remuneration of contractors or grantees.**

No payments or gifts are provided to respondents.

- 10. Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation, or agency policy.**

No assurance of confidentiality has been provided.

- 11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private. This justification should include the reasons why the agency considers the questions necessary, the specific uses to be made of the information, the explanation to be given to persons from whom the information is requested, and any steps to be taken to obtain their consent.**

There are no questions of a sensitive nature.

- 12. Provide estimates of the hour burden of the collection of information. The statement should:**

- **Indicate the number of respondents, frequency of response, annual hour burden, and an explanation of how the burden was estimated. Unless directed to do so, agencies should not conduct special surveys to obtain information on which to base hour burden estimates. Consultation with a sample (fewer than 10) of potential respondents is desirable. If the hour burden on respondents is expected to vary widely because of differences in activity, size, or complexity, show the range of estimated hour burden, and explain the reasons for the variance. Generally, estimates should not include burden hours for customary and usual business practices.**
- **If this request for approval covers more than one form, provide separate hour burden estimates for each form and aggregate the hour burdens in Item 13.**
- **Provide estimates of annualized cost to respondents for the hour burdens for collections of information, identifying and using appropriate wage rate categories. The cost of contracting out or paying outside parties for information collection activities should not be included here. Instead, this cost should be included in Item 14.**

The interim final rules require that a plan that has chosen to opt into a state law must prominently display in its plan materials describing the coverage of emergency services and/or out-of-network services a statement that the plan has opted into a specified state law, identify the state (or states), and include a general description of the emergency services and/or services provided by out-of-network facilities and providers that are covered by the specified state law.

Currently, there are four states that allow self-funded plans to opt in: Nevada, New Jersey, Washington, and Virginia. According to the Nevada Department of Health and Human Services' 2020 Annual Report, 20 private entities or organizations have elected to participate in the state's balance billing law. In addition, according to the Virginia State Corporation Commission, 231 private self-funded plans in Virginia have elected to participate in the state's balance billing law.¹ Furthermore, according to Washington's Office of the Insurance Commissioner, 309 private self-funded plans in Washington have elected to participate in the state's balance billing law.² The Department does not have data on the number of self-insured plans that have opted in the New Jersey's balance billing law. In order to estimate the number of self-insured plans that have opted into the balance billing law for New Jersey, the Department has scaled Washington's estimate by the number of participants with self-insured ERISA-covered plans. According to the

1 Virginia State Corporation Commission. <https://scc.virginia.gov/balancebilling#>

2 Washington's Office of Insurance Commissioner. "Self-Funded Group Health Plans Participating in the Balance Billing Protection Act." <https://www.insurance.wa.gov/self-funded-group-health-plans>

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2020 Health Insurance Coverage Bulletin, there are respectively, 0.8 million, 2.2 million, and 2.5 million with self-insured ERISA-covered plans in Nevada, Virginia, and New Jersey.³ Additionally, according to the Washington’s Office of Insurance Commissioner, about 0.5 million self-funded participants have opted into Washington’s balance billing law.⁴ This results in a total of 6 million participants.⁵ Thus, the Department estimates that 20, 231, 309, and 62 private self-insured plans will opt in respectively in Nevada, Virginia, Washington, and New Jersey, resulting in a total of 622 self-insured plans.⁶ These plans will incur the one-time burden and cost to include the disclosure in their plan documents in 2022.

The Department assumes that it will take 1 hour for a clerical worker, with a wage rate of \$55.23⁷, to gather information and review information. This results in hour burden of 622 hours, with an equivalent cost of \$34,353. The Department assumes that it will take 30 minutes for a benefits manager, with a wage rate of \$121.78⁸, to gather information and review information. This results in hour burden of 311 hours, with an equivalent cost of \$37,874. In 2022, the total hour burden is 933 hours, with an equivalent cost of \$72,227. Thus, the three-year average hour burden is 311 hours, with an equivalent cost of \$24,076.

Estimated Annualized Respondent Cost and Hour Burden

Activity	No. of Respondents	No. of Responses per Respondent	Total Responses	Average Burden (Hours)	Total Burden (Hours)	Hourly Wage Rate	Total Burden Cost
Plans that have	622	1	622	1	622	\$55.23	\$34,353

3 Employee Benefits Security Administration. “Health Insurance Coverage Bulletin: Abstract of Auxiliary Data for the March 2020 Annual Social and Economic Supplement to the Current Population Survey.” (2019).

<https://www.dol.gov/sites/dolgov/files/EBSA/researchers/data/health-and-welfare/health-insurance-coverage-bulletin-2020.pdf>
<https://www.dol.gov/sites/dolgov/files/EBSA/researchers/data/health-and-welfare/health-insurance-coverage-bulletin-2020.pdf>

4 Washington’s Office of Insurance Commissioner. “Self-Funded Group Health Plans Participating in the Balance Billing Protection Act.” <https://www.insurance.wa.gov/self-funded-group-health-plans>

5 Employee Benefits Security Administration. “Health Insurance Coverage Bulletin: Abstract of Auxiliary Data for the March 2020 Annual Social and Economic Supplement to the Current Population Survey.” (2020).

<https://www.dol.gov/sites/dolgov/files/EBSA/researchers/data/health-and-welfare/health-insurance-coverage-bulletin-2020.pdf>

6 New Jersey: $335 \times (0.5/2.5) = 67$ self-insured plans; 67 self-insured plans – 5 non-federal self-insured plans = 62 private self-insured plans

7 Internal DOL calculation based on 2020 labor cost data. For a description of the Department’s methodology for calculating wage rates, see <https://www.dol.gov/sites/dolgov/files/EBSA/laws-and-regulations/rules-and-regulations/technical-appendices/labor-cost-inputs-used-in-eb-sa-opr-ria-and-pra-burden-calculations-june-2019.pdf>.

8 *Ibid.*

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chosen to opt into a state law requirements- Clerical workers gather information and review information (2022)							
Plans that have chosen to opt into a state law requirements- Benefit managers review information (2022)	622	1	622	30/60	311	\$121.78	\$37,874
Total (3-year average)*	207	1	207	1.5	311	-	\$24,076

13. Provide an estimate of the total annual cost burden to respondents or recordkeepers resulting from the collection of information. (Do not include the cost of any hour burden shown in Items 12 or 14).

- **The cost estimate should be split into two components: (a) a total capital and start up cost component (annualized over its expected useful life); and (b) a total operation and maintenance and purchase of service component. The estimates should take into account costs associated with generating, maintaining, and disclosing or providing the information. Include descriptions of methods used to estimate major cost factors including system and technology acquisition, expected useful life of capital equipment, the discount rate(s), and the time period over which costs will be incurred. Capital and start-up costs include, among other items, preparations for collecting information such as purchasing computers and software; monitoring, sampling, drilling and testing equipment; and record storage facilities.**
- **If cost estimates are expected to vary widely, agencies should present ranges of cost burdens and explain the reasons for the variance. The cost of purchasing or contracting out information collection services should be a part of this cost burden estimate. In developing cost burden estimates, agencies may consult with a sample of respondents (fewer than 10), utilize the 60-day pre-OMB submission public comment process and use existing economic or regulatory impact analysis associated with the rulemaking containing the information collection, as appropriate.**
- **Generally, estimates should not include purchases of equipment or services, or portions thereof, made: (1) prior to October 1, 1995, (2) to achieve regulatory compliance with requirements not associated with the information**

collection, (3) for reasons other than to provide information or keep records for the government, or (4) as part of customary and usual business or private practices.

The average number of participants in a self-insured ERISA-covered plan that will opt into the four states' balance billing laws is 9,646.⁹ The Department assumes that only printing and material costs are associated with the disclosure requirement, because the notice can be incorporated into existing plan documents. The Department estimates that the disclosure will require one-half of a page, at a cost of \$0.05 per page for printing and materials, and 34 percent of plan documents will be delivered electronically at minimal cost.¹⁰ Thus, in 2022, the cost to deliver 66 percent of these disclosures in print is estimated to be approximately \$318.¹¹ The three-year average cost burden is \$106.

- 14. Provide estimates of annualized cost to the Federal government. Also, provide a description of the method used to estimate cost, which should include quantification of hours, operational expenses (such as equipment, overhead, printing, and support staff), and any other expense that would not have been incurred without this collection of information. Agencies also may aggregate cost estimates from Items 12, 13, and 14 in a single table.**

There is no annualized cost to the Federal government.

- 15. Explain the reasons for any program changes or adjustments reporting in Items 13 or 14.**

The estimates reflect the update in number of private self-insured plans will opt in Nevada, Virginia, Washington, and New Jersey.

- 16. For collections of information whose results will be published, outline plans for tabulation, and publication. Address any complex analytical techniques that will be used. Provide the time schedule for the entire project, including beginning and ending dates of the collection of information, completion of report, publication dates, and other actions.**

There are no plans to publish the results of this collection of information.

9 (6,000,000 participants with self-insured ERISA-covered plans)/ 622 self-insured ERISA-covered plans = 9,646 participants per self-insured ERISA-covered plan

10 According to data from the National Telecommunications and Information Agency, 34 percent of households in the United States accessed health records or health insurance online. <https://www.ntia.doc.gov/blog/2020/more-half-american-households-used-internet-health-related-activities-2019-ntia-data-show>.

11 9,646 participants x 0.66 x \$0.05 = \$318

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- 17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons that display would be inappropriate.**

Not applicable.

- 18. Explain each exception to the certification statement identified in Item 19.**

There are no exceptions to the certification statement.

- B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS.**

Not applicable.