

DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
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OFFICE OF THE ADMINISTRATOR

DATE: August 31, 2021

TO: Sharon Block
Acting Administrator
Office of Information and Regulatory Affairs
Office of Management and Budget

FROM: Chiquita Brooks-LaSure *Chiquita LaS*
Administrator
Centers for Medicare and Medicaid Services
Department of Health and Human Services

SUBJECT: Request for Emergency Clearance of the Paperwork Reduction Act Package for Notice of Rescission of Coverage and Disclosure Requirements for Patient Protection under the Affordable Care Act

Emergency Justification

The Centers for Medicare & Medicaid Services (CMS) is requesting that an information collection request for some provisions in the Consolidated Appropriations Act of 2021 (Appropriations Act) enacted on December 27, 2020, related to the No Surprises Act be processed in accordance with the implementing regulations of the Paperwork Reduction Act of 1995 (PRA) at 5 CFR 1320.13(a)(2)(i). We believe that public harm will result if the standard, non-emergency clearance procedures are followed. CMS is also requesting waiver of the notice requirement set forth in 5 CFR 1320.13(d).

Specifically, we are requesting emergency approval for the revisions to the information collection requirement related to notice of right to designate a primary care provider (45 CFR 149.310(a)(4)). The No Surprises Act extends the applicability of the patient protections for choice of health care professionals to grandfathered health plans. The requirement on plans and health insurance issuers to provide this notice applies for plan years (in the individual market, policy years) beginning on or after January 1, 2022. It is in public interest that individuals receive the protections under the No Surprises Act on the date on which those protections go into effect. Following the standard PRA process will not provide grandfathered plans and health insurance issuers, sufficient time to implement this new requirement.

Background

The Patient Protection and Affordable Care Act, Pub. L. 111-148, was enacted on March 23, 2010; and the Health Care and Education Reconciliation Act of 2010, Pub. L. 111-152, was

enacted on March 30, 2010 (collectively known as the “Affordable Care Act”). The Affordable Care Act reorganizes, amends, and adds to the provisions of part A of title XXVII of the Public Health Service Act (PHS Act) relating to group health plans and health insurance issuers in the group and individual markets.

The interim final regulations titled “Patient Protection and Affordable Care Act: Preexisting Condition Exclusions, Lifetime and Annual Limits, Rescissions, and Patient Protections” (75 FR 37188, June 28, 2010) implemented the rules for group health plans and health insurance coverage in the group and individual markets under provisions of the Affordable Care Act regarding rescissions, and patient protections. The provisions are finalized in the final regulations titled “Final Rules under the Affordable Care Act for Grandfathered Plans, Preexisting Condition Exclusions, Lifetime and Annual Limits, Rescissions, Dependent Coverage, Appeals, and Patient Protections” (80 FR 72192, November 18, 2015, henceforth 2015 final regulations). Section 2719A of the PHS Act imposes, with respect to a group health plan, or group or individual health insurance coverage, requirements relating to the choice of a health care professional and requirements relating to benefits for emergency services.

The No Surprises Act amended section 2719A of the PHS Act to sunset when the new emergency services protections under the No Surprises Act take effect. The provisions of section 2719A of the PHS Act will no longer apply with respect to plan years beginning on or after January 1, 2022. The No Surprises Act re-codified the patient protections related to choice of health care professional in newly added section 9822 of the Internal Revenue Code (the Code), section 722 of the Employee Retirement Income Security Act (ERISA), and section 2799A-7 of the PHS Act. To reflect these statutory amendments, the interim final regulations “Requirements Related to Surprise Billing; Part I” (86 FR 36872, henceforth 2021 interim final regulations) add a sunset clause to the current patient protection provisions codified in the Patient Protections Final Rule, and re-codify the provisions related to choice of health care professional without substantive change at 45 CFR 149.310.

The No Surprises Act extends the applicability of the patient protections, including those related to choice of health care professionals, to grandfathered health plans. The patient protections under section 2719A of the PHS Act apply to only non-grandfathered group health plans and health insurance issuers offering non-grandfathered group or individual health insurance coverage. In contrast, the patient protections under the No Surprises Act apply generally to all group health plans and group and individual health insurance coverage, including grandfathered health plans. Therefore, the requirements regarding patient protections, including those related to choice of health care professional under the 2021 interim final regulations, will newly apply to grandfathered health plans for plan years beginning on or after January 1, 2022.