Supporting Statement – Part A
Complaints Submission Process under the No Surprises Act
(CMS-10779/OMB control number 0938-1406)

A. Background

Enacted on December 27, 2020, the No Surprises Act, which was enacted as part of the Consolidated Appropriations Act (CAA), amended the Employee Retirement Income Security Act of 1974 (ERISA), the Public Health Service Act (PHS Act), and the Internal Revenue Code of 1986 (Code).[1] The No Surprise Act implements provisions that protect individuals from surprise medical bills for emergency services, air ambulance services furnished by nonparticipating providers, and non-emergency services furnished by nonparticipating providers at participating facilities in certain circumstances. Additionally, the No Surprises Act sets forth a complaints processes with respect to potential violations of balance billing requirements set forth in the No Surprises Act.

The No Surprises Act provides federal protections against surprise billing and limits out-of-network cost sharing under many of the circumstances in which surprise medical bills arise most frequently. The 2021 interim final regulations "Requirements Related to Surprise Billing; Part I" (86 FR 36872, 2021 interim final regulations) issued by the Departments of Health and Humans Services (HHS), Department of Labor (DOL), the Department of Treasury (collectively, the Departments), implement provisions of the No Surprises Act that apply to group health plans, health insurance issuers offering group or individual health insurance coverage that provide protections against balance billing and out-of-network cost sharing with respect to emergency services, non-emergency services furnished by nonparticipating providers at certain participating health care facilities, and air ambulance services furnished by nonparticipating providers of air ambulance services.

The No Surprises Act and the 2021 interim final regulations directs the Departments of Labor, Health and Human Services, and the Department of Treasury (collectively, "the Departments") to establish a process to receive complaints regarding violations of the application of qualifying payment amount (QPA) requirements by group health plans and health insurance issuers offering group or individual health coverage.[2] The No Surprises Act also directs HHS to establish a process to receive consumer complaints regarding violations by health care providers, facilities, and providers of air ambulance services regarding balance billing requirements and to respond to such complaints within 60 days.[3,4]

[1]Pub. L. 116-260 (Dec. 27, 2020).
[2]Internal Revenue Code (Code) section 9816(a)(2)(B)(iv), ERISA Section 716(a)(2)(B)(iv) and PHS Act section 2799A- (a)(2)(B)(iv).
[3]PHS Act section 2799B-4(b)(3).
[4]PHS Act section 2799B-1, 2799B-2, 2799B-3, and 2799B-5.

B. Justification

1. Need and Legal Basis

The No Surprises Act directs the Departments to establish a process to receive complaints regarding violations of the application of QPA requirements by group health plans and health insurance issuers offering group or individual health coverage. The No Surprises Act also directs HHS to establish a process to receive consumer complaints regarding violations by health care providers, facilities, and providers of air ambulance services regarding balance billing requirements and to respond to such complaints within 60 days.

2. Information Users

CMS will request information from non-federal governmental plans and issuers, health care providers, facilities, providers of air ambulance services, and individuals to review and process a complaint for potential violations of balance billing requirements.

3. Use of Information Technology

Plans and issuers, health care providers, facilities, providers of air ambulance services, and individuals may submit some or all information electronically to CMS.

4. Duplication of Efforts

The No Surprises Act amended ERISA, the Code, and the PHS Act. However, only CMS oversees non-Federal governmental health plans and issuers of individual and group health insurance coverage, therefore there will be no duplication of effort with DOL and the Treasury. States may request or require issuers to provide information as well. However, no duplication should occur because CMS will only request information from issuers when CMS has direct enforcement responsibility for the No Surprises Act in a state.[5]

5. Small Businesses

Small businesses are not significantly affected by these information collection requirements (ICRs).

6. Less Frequent Collection

This collection is required to fulfill the statutory requirements in the No Surprises Act. CMS will not be able to conduct reviews of balance billing complaints and ensure regulatory compliance without collecting the information from non-federal governmental plans and issuers, health care providers, facilities, providers of air ambulance services, and individuals.

[5]CMS is responsible for enforcement of the No Surprises Act with regard to issuers in Missouri, Texas, and Wyoming.

7. Special Circumstances

There are no special circumstances.

8. Federal Register/Outside Consultation

A 60-day notice published in the Federal Register on February 16, 2022 (87 FR 8842), providing the public with a 60-day period to submit written comments on the ICRs. Two comments were received. A 30-day FR Notice published June 2, 2022 (87 FR 33492).

9. Payments/Gifts to Respondents

No payments or gifts are associated with these ICRs.

10. Confidentiality

The No Surprises Act does not require CMS to share information on findings of compliance and noncompliance of balance billing violations.

11. Sensitive Questions

These ICRs involve no sensitive questions.

12. Burden Estimates (Hours & Cost)

HHS estimates that there will be, on average, 78,000 balance billing complaints against providers, facilities, providers of air ambulance services, plans, and issuers submitted annually. HHS estimates that it will take each complainant 30 minutes (at an hourly rate of $54.14)[6] to collect all relevant documentation related to the alleged violation and to access and complete the provided complaint form, with an equivalent cost of approximately $27. The total burden for all complainants is estimated to be 39,000 hours, with an equivalent annual cost of approximately $2,111,460. As DOL, the Department of Treasury and HHS share jurisdiction, HHS will account for 50 percent of the burden, approximately 19,500 burden hours with an equivalent cost of approximately $1,055,730.

TABLE 1: Annual Burden and Costs for Complaints Related to Surprise Billing

Estimated Number of Respondents	Estimated Number of Responses	Burden Per Response (Hours)	Cost per Response	Total Annual Burden (Hours)	Total Estimated Cost
39,000	39,000	0.5	$27.07	19,500	$1,055,730

[6] We use the average wage rate for all occupations.

14. Cost to Federal Government

Costs to the federal government to build a system to receive complaints, and expand existing systems, estimated to be one-time costs of approximately $17.2 million in 2021; and ongoing costs to process complaints, estimated to be approximately $10.2 million in 2022, $10.4 million in 2023 and $10.6 million in 2024 and subsequent years.

15. Changes to Burden

There is an increase of 18,600 burden hours, from 900 hours to 19,500 hours. We received comments that our estimate of complaints we will receive are significantly lower than what has been historically received through similar complaints processes due to changes in national health insurance law. Based on comments received, HHS, DOL, and Treasury have increased their estimates to 78,000 complaints a year. The percentage of shared burden between the Departments was not changed.

Table 2 includes a summary of the changed burden related to the ICR and the burden accounted for by each Department.

TABLE 2: Summary of Annual Burden Estimates

Regulation Section	ICR Title	Model Instrument	Percentage of Shared Burden	Shared Burden Hours
45 CFR 149.150, 45 CFR 149.450	Complaints Process for Surprise Medical Bills	No†	HHS - 50; DOL – 25; Department of Treasury - 25	HHS- 19,500; DOL – 9,750; Department of Treasury– 9,750.

† - The model instrument will be included in the 60-day package.

16. Publication/Tabulation Dates

CMS is not required to publish reports.

17. Expiration Date

There is a model instrument associated with this ICR. Any associated model instruments will be included in the 60-day package.