

## **Supporting Statement for Reporting Requirements Regarding Air Ambulance Services (CMS-10785/OMB control number 0938-NEW)**

### **A. Background**

Title I (No Surprises Act) and Title II (Transparency) of Division BB of the Consolidated Appropriations Act, 2021 (Pub. L. 116-260) (CAA), establish new protections for consumers related to surprise billing and transparency in health care. The Department of Health and Human Services (HHS), in coordination with the Department of Labor (DOL) and the Department of the Treasury (Treasury) (collectively, the Departments), and to a lesser degree the Department of Transportation and other federal components, is responsible for implementation and, along with state regulatory entities, enforcement of these new requirements. This information collection concerns the collection of data related to air ambulance services required under the No Surprises Act.

The No Surprises Act was enacted as part of the CAA to protect consumers against unanticipated “surprise” billing related to health care costs. The No Surprises Act amends the Public Health Service Act (PHS Act), the Employee Retirement Income Security Act of 1974 (ERISA), and the Internal Revenue Code (the Code) to, among other things, authorize the collection of data from group health plans and health insurance issuers and providers of air ambulance services for a two-year period. The Act also requires HHS, in consultation with the Department of Transportation, to specify in rulemaking the form and manner in which such information collection will be made and to use that data to prepare a publicly-available report. The proposed rule, entitled “Reporting Requirements Regarding Air Ambulance Services, Agent and Broker Disclosures, and Provider Enforcement” (henceforth the proposed rule) includes requirements for group health plans, health insurance issuers, FEHB carriers, and providers of air ambulance services to submit information regarding air ambulance services.

### **B. Justification**

#### **1. Need and Legal Basis**

Section 106(a) of the No Surprises Act requires providers of air ambulance services to submit information regarding air ambulance services, including air ambulance providers’ transportation and medical costs, information on each provider’s bases and aircraft, the number of air ambulance transports by payor and other information about transports, data on claims denials, and other information specified by the Secretary of HHS. Section 106(b) also requires group health plans and health insurance issuers to report information about claims data for air ambulance services and such other information regarding air ambulance services as specified by the Secretary of HHS. Section 106(c) of the No Surprises Act further requires the Secretary, in consultation with the Secretary of Transportation, to issue a comprehensive public report summarizing the data and providing an assessment of the state and certain aspects and characteristics of the air ambulance market.

Section 2799A-8 of the PHS Act requires group health plans and health insurance issuers to submit certain claims data related to air ambulance services to HHS. In the proposed rule, HHS interprets the statute to require plans and issuers to submit data regarding air ambulance services on a calendar year basis, and assumes that the proposed rule will be finalized in 2021. Therefore, plans, issuers, and FEHB carriers would be required to submit the data for calendar year 2022 by March 31,

2023, and the data for calendar year 2023 by March 30, 2024. The proposed time and manner of reporting are set forth in 45 CFR 149.230(a) of the proposed rule, and 45 CFR 149.230(b) includes a list of the proposed data elements related to air ambulance services to be collected from plans, issuers, and FEHB carriers.

Section 106A of the No Surprises Act requires providers of air ambulance services to submit cost and organizational data as well as other transport-level data related to air ambulance services. Under proposed 45 CFR 149.460(a), data for each of the 2022 and 2023 calendar years must be submitted to the Secretary by March 31, 2023 and by March 30, 2024, respectively, on a form and in the manner prescribed by the Secretary. The proposed data elements to be collected from providers of air ambulance services are listed in 45 CFR 149.460(b) of the proposed rule.

## 2. Information Uses

The air ambulance services data collections and third-party disclosure requirements will assist HHS and the public by improving understanding of the air ambulance industry by policymakers, increasing transparency of market conditions impacting air ambulance services, and indirectly improving contract negotiations between payors and air ambulance providers and suppliers. In addition, the air ambulance data will be used to develop the publicly available comprehensive report prepared by HHS.

## 3. Use of Information Technology

HHS anticipates that the process for plans, issuers, FEHB carriers, and providers of air ambulance services to collect the required information from their databases will be automated and the required data will be submitted electronically to HHS.

HHS anticipates leveraging existing information technology (IT) systems for the collection of the data in the information collection requirements in 45 CFR part 149. HHS aims to lessen the burden on issuers and providers of air ambulance services for required submissions by using existing IT systems.

## 4. Duplication of Efforts

There is no duplication of efforts for these information collection requirements.

## 5. Small Business

We do not anticipate that small businesses will be significantly burdened by this data collection.

## 6. Less Frequent Collection

The No Surprises Act requires the collection of information over two years and does not require additional information collection. A less frequent collection is therefore not a consideration for this information collection.

## 7. Special Circumstances

There are no special circumstances.

8. Federal Register/Outside Consultation

The proposed rule published on September 16, 2021 (86 FR 51730). The public solicitation for comments related to these information collection requirements will be open for a period of 60 days.

9. Payments/Gifts to Respondents

No payments or gifts will be provided to respondents.

10. Confidentiality

To the extent of applicable law and HHS policies, HHS will maintain consumer privacy with respect to the information disclosed.

11. Sensitive Questions

There are no sensitive questions included in this information collection effort.

12. Burden Estimates (Hours & Wages)

To derive wage estimates, HHS generally used data from the Bureau of Labor Statistics to derive average labor costs (including a 100 percent increase for fringe benefits and overhead) for estimating the burden associated with the ICRs.<sup>1</sup> Table 1 presents the mean hourly wage, the cost of fringe benefits and overhead, and the adjusted hourly wage.

As indicated, employee hourly wage estimates have been adjusted by a factor of 100 percent. This is necessarily a rough adjustment, both because fringe benefits and overhead costs vary significantly across employers, and because methods of estimating these costs vary widely across studies. Nonetheless, there is no practical alternative, and HHS believes that doubling the hourly wage to estimate total cost is a reasonably accurate estimation method.

**Table 1: Adjusted Hourly Wages Used in Burden Estimates**

Occupation Title	Occupational Code	Mean Hourly Wage (\$/hr.)	Fringe Benefits and Overhead (\$/hr.)	Adjusted Hourly Wage (\$/hr.)
Computer and Information Systems Managers	11-3021	\$77.76	\$77.76	\$155.52
Computer Programmers	15-1251	\$45.98	\$45.98	\$91.96
Secretaries and Administrative Assistants, Except Legal, Medical, and Executive	43-6014	\$19.43	\$19.43	\$38.86

<sup>1</sup> See May 2020 Bureau of Labor Statistics, Occupational Employment Statistics, National Occupational Employment and Wage Estimates. Available at [https://www.bls.gov/oes/current/oes\\_nat.htm](https://www.bls.gov/oes/current/oes_nat.htm).

Business Operations Specialist	13-1198	\$40.53	\$40.53	\$81.06
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The following subsections of this document contain estimates of the burdens imposed by the information collection requirements. These burdens reflect the time and effort for group health plans and health insurance issuers and for providers of air ambulance services to collect and submit the data in the required format to HHS.

*1. ICRs Regarding Reporting Requirements for Group Health Plans and Health Insurance Issuers (45 CFR 149.230)*

Health insurance issuers, FEHB carriers, and third-party administrators (on behalf of self-insured plans) (TPA) would incur burden to make IT changes to collect, consolidate, and report the required information, in the required format, to HHS. HHS assumes that this one-time cost would be incurred in 2022. HHS estimates that 473 issuers<sup>2</sup>, 46 FEHB carriers, and 205 TPAs<sup>3</sup> would be subject to the requirements in the proposed rules. HHS estimates that for each issuer, FEHB carrier, or TPA to make the appropriate IT changes and submit the required data, it would take a computer and systems information manager (at an hourly rate of \$155.52) 8 hours to design and direct the work required for the updates, and a computer programmer (at an hourly rate of \$91.96) 40 hours to collaborate with the manager to design and implement system changes. HHS estimates that each issuer, FEHB carrier, or TPA would incur a one-time burden of 48 hours, with an equivalent cost of \$4,923. For all issuers, FEHB carriers, and TPAs to meet the proposed reporting requirements, HHS estimates a total one-time burden of 34,752 hours, with an equivalent cost of \$3,563,933 to be incurred in 2022.

HHS assumes that once the process for collecting and formatting the required data is established, the resources needed to submit the required information for the 2022 and 2023 plan years (to be submitted by March 31, 2023 and March 31, 2024, respectively) would be limited. HHS estimates that each issuer, FEHB carrier, or TPA would require a computer and systems information manager (at an hourly rate of \$155.52) 4 hours to oversee the compilation of the data, a computer programmer (at an hourly rate of \$91.96) 4 hours to extract the required data and provide it in the required reporting format, and an administrative secretary (at an hourly rate of \$38.86) 4 hours to assemble the documents and submit them to HHS. HHS estimates that each issuer, FEHB carrier, or TPA would incur an annual burden of 12 hours, with an equivalent cost of \$1,145. For all issuers, FEHB carriers, and TPAs, HHS estimates an annual burden of 8,688 hours, with an equivalent cost of approximately \$829,241 to be incurred in 2023 and 2024.

The total annual burden for all issuers, FEHB carriers, and TPAs to make the appropriate IT and system changes would be approximately 34,752 hours, at a total cost of approximately \$3,563,933 to be incurred in 2022. Issuers, FEHB carriers, and TPAs would also incur an annual burden, in 2023 and 2024, of 8,688 hours and a total cost of approximately \$829,241 to submit the data to HHS. The total annual burden for all respondents is likely overestimated because the estimate does not reflect process efficiencies for FEHB carriers that are also issuers. As HHS, DOL, the Department of the Treasury, and Director of the Office of Personnel Management (OPM) share jurisdiction, HHS will account for 45

<sup>2</sup> Based on data from MLR annual report for the 2019 MLR reporting year, available at <https://www.cms.gov/CCIIO/Resources/Data-Resources/mlr>.

<sup>3</sup> Non-issuer TPAs based on data derived from the 2016 Benefit Year reinsurance program contributions.

percent of the burden, or approximately 15,638 hours in 2022 with an equivalent cost of \$1,603,770 and annual burden of approximately 3,910 hours, with an equivalent cost of \$373,158 in 2023 and 2024.

**TABLE 2: Proposed One-time and Annual Burden and Costs for Issuers, TPAs, and FEHB Carriers Related to Air Ambulance Data Reporting Requirements**

<b>Year</b>	<b>Estimated Number of Respondents</b>	<b>Estimated Number of Responses</b>	<b>Burden per Response (hours)</b>	<b>Total Estimated Annual Burden (hours)</b>	<b>Total Estimated Labor Cost (\$)</b>
2022	326	326	48	15,638	\$1,603,770.05
2023	326	326	12	3,910	\$373,158.29
2024	326	326	12	3,910	\$373,158.29
<b>Three-year average</b>	<b>326</b>	<b>326</b>	<b>24</b>	<b>7,819</b>	<b>\$783,362</b>

2. ICRs Regarding Reporting Requirements for Providers of Air Ambulance Services (45 CFR 149.460)

Section 106(b) of the No Surprises Act requires providers of air ambulance services to submit cost and organizational data as well as other transport-level data related to air ambulance services. In 45 CFR 149.460(a) of the proposed rule, HHS sets forth the proposed time and manner of reporting, and in 45 CFR 149.460(b), HHS lists the data elements HHS proposes to collect on air ambulance services from air ambulance service providers. HHS estimates the burden associated with the data reporting required at 45 CFR 149.460 to be the time and effort necessary for providers of air ambulance services to submit the required data elements in the required format to HHS.

HHS anticipates a one-time cost for providers of air ambulance services to make IT changes to collect, consolidate and report the required information, in the required format, to HHS. This one-time cost would be incurred in 2022. HHS estimates that 75 providers of air ambulance services<sup>4</sup> would be subject to the requirements in these proposed rules. HHS estimates that for each provider to make the appropriate IT changes and submit the required data, it would require a computer and systems information manager (at an hourly rate of \$155.52) 80 hours to design and direct the work required for the updates, a computer programmer (at an hourly rate of \$91.96) 240 hours to collaborate with the manager to design and implement system changes, and a business operations specialist (at an hourly rate of \$81.06) 80 hours to provide input regarding the data content for the reports. HHS estimates each provider of air ambulance services would incur a one-time burden of 400 hours, with an equivalent cost of \$40,997. For all providers of air ambulance services to meet the proposed reporting requirements, HHS estimates a total one-time burden of 30,000 hours, with an equivalent cost of \$3,074,760.

<sup>4</sup> Fact Sheet – FAA Initiatives to Improve Helicopter Air Ambulance Safety. (February 20, 2014). Retrieved from [https://www.faa.gov/news/fact\\_sheets/news\\_story.cfm?newsId=15794](https://www.faa.gov/news/fact_sheets/news_story.cfm?newsId=15794).

HHS assumes that once the process for collecting and formatting the required data is established, the resources required to submit the required information to HHS for the 2022 and 2023 plan years (to be submitted by March 31, 2023 and March 31, 2024, respectively) would be limited. HHS estimates that each provider of air ambulance services would require a computer and systems information manager (at an hourly rate of \$155.52) 4 hours to oversee the compilation of the data, a computer programmer (at an hourly rate of \$91.96) 4 hours to extract the required data and provide it in the required reporting format, a business operations specialist (at an hourly rate of \$81.06) 8 hours to review the data reports, and an administrative secretary (at an hourly rate of \$38.86) 4 hours to assist in the assembly of documents and submit them to HHS. HHS estimates that each provider of air ambulance services would incur an annual burden of 20 hours, with an equivalent cost of \$1,794. For all providers of air ambulance services, HHS estimates an annual burden of 1,500 hours, with an equivalent cost of \$134,538 in 2023 and 2024.

The total one-time burden and costs, to be incurred in 2022, for all providers of air ambulance services to make the appropriate IT and system changes would be approximately 30,000 hours and a total cost of approximately \$3,074,760. Providers of air ambulance services would also incur an annual burden and cost, for 2023 and 2024, of 1,500 hours and \$134,538 to submit the data to HHS.

**TABLE 3: Proposed One-time and Annual Burden and Costs Related to Air Ambulance Data Reporting Requirements for Providers of Air Ambulance Services**

<b>Year</b>	<b>Estimated Number of Respondents</b>	<b>Number of Responses</b>	<b>Burden per Response (hours)</b>	<b>Total Annual Burden (hours)</b>	<b>Total Cost</b>
2022	75	75	400	30,000	\$3,074,760
2023	75	75	20	1,500	\$134,538
2024	75	75	20	1,500	\$134,538
<b>Three-Year Average</b>	75	75	147	11,000	\$1,114,612

**TABLE 4: Proposed Total One-time and Annual Burden and Costs Related to Air Ambulance Data Reporting Requirements for Issuers, TPAs, FEHB Carriers, and Providers of Air Ambulance Services**

<b>Year</b>	<b>Estimated Number of Respondents</b>	<b>Number of Responses</b>	<b>Burden per Response (hours)</b>	<b>Total Annual Burden (hours)</b>	<b>Total Cost</b>
2022	401	401	448	45,638	\$4,678,530.05
2023	401	401	32	5,410	\$507,696.29
2024	401	401	32	5,410	\$507,696.29
<b>Three-Year Average</b>	401	401	47	18,819	\$1,897,974

13. Capital Costs

There are no additional capital costs associated with these information collections.

14. Cost to Federal Government

The Federal government will incur an estimated cost of approximately \$28.3 million during the time period 2021-2024 to implement the reporting requirements.

15. Changes to Burden

This is a new information collection request.

16. Publication/Tabulation Dates

The data collected will be submitted to HHS and will be used by the Secretary of HHS, in consultation with the Secretary of Transportation, to prepare a publicly-available report.

17. Expiration Date

The expiration date and OMB control number will appear on the first page of the instrument (top-right corner).

## **ATTACHMENTS:**

- 1. AA Report Instructions - Plans Issuers Carriers**
- 2. AA Report Template - Plans Issuers Carriers**
- 3. AA Report Instructions – Providers**
- 4. AA Report Template - Providers**