

Appendix 1 - Agent and Broker Disclosure and Reporting Requirements Data Elements

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 agent or broker compensation associated with enrolling individuals in individual health insurance and reporting that information to HHS.

The CAA amended Title XXVII of the Public Health Service Act (PHS Act) (42 U.S.C. 300gg-41 et seq.) to add section 2746 to require issuers offering individual health insurance coverage or short-term limited duration insurance (STLDI) coverage to make disclosures regarding direct or indirect compensation provided by the issuer to an agent or broker to prospective enrollees and report annually such compensation to the Secretary of Health and Human Services (HHS). The proposed rule, entitled “Reporting Requirements Regarding Air Ambulance Services; Agent and Broker Disclosure Requirements; Provider Enforcement” (henceforth the proposed rule” includes requirements for health insurance issuers offering individual health insurance coverage or short-term, limited-duration insurance to make disclosures to policyholders and submit reports to HHS regarding direct and indirect compensation provided by the issuer to an agent or broker associated with enrolling individuals in such coverage.

These disclosures are to inform policyholders, participants, beneficiaries, or enrollees of any direct or indirect compensation being paid to an agent or broker associated with the policyholder, participant, beneficiary, or enrollee enrolling in individual health coverage or STLDI coverage. Providing this information to the potential consumer would properly notify the consumer so they may be able to make more informed decisions regarding their health coverage. Consumers interested in knowing to what degree an agent or broker would receive a commission for selling them a health insurance plan may use this information to determine if they believe an agent or broker may have a conflict of interest and is seeking to steer the consumer toward a plan in order to obtain greater commissions rather than towards plans that adequately meet their needs. Disclosing this information may provide consumers more clarity into the potential motivations or incentives of the agent or broker and allow them to determine if they want to enroll in, or renew, a particular health insurance plan.

All issuers covered by this section are required to report annually to the Secretary of HHS any direct or indirect compensation provided to an agent or broker associated with enrolling individuals in individual health insurance coverage or STLDI coverage. Analyses of this information would assist HHS in monitoring and enforcing compliance with the disclosure requirements and ensuring that consumer disclosures accurately and adequately reflect direct or

indirect compensation payment practices. HHS may also use the information to report, in a de-identified manner consistent with federal privacy laws, the distribution of compensation throughout the individual health insurance and STLDI markets.

Table 1, below, identifies data elements that issuers of individual health insurance coverage or short-term, limited-duration insurance (STLDI) must include in their disclosures to prospective policyholders prior to plan selection and on documentation confirming enrollment. Table 2 identifies data elements that issuers of individual health insurance coverage or STLDI must include in their annual reporting to HHS.

Table 1: Agent and Broker Disclosure Requirements

RESPONSIBLE PARTY	DATA ELEMENT	DESCRIPTION
Issuer	Direct Compensation	Monetary amounts, including sales and base commissions, paid by an issuer that are attributable directly to the policy, certificate, or contract of insurance and that are paid to an agent or broker for the sale, placement, or renewal of individual health insurance coverage or short-term, limited-duration insurance.
Issuer	Indirect Compensation	Payments by an issuer attributable indirectly to a policy, certificate, or contract of insurance to agents, brokers, and other persons for items other than sales and base commissions (for example, service fees, consulting fees, finders' fees, profitability and persistency bonuses, awards, prizes, volume-based incentives, and non-monetary forms of compensation).
Issuer	Default Disclosure	In the absence of any documentation required by State law or the requirement for a notice of renewal of coverage, issuers must disclose the amount of direct and indirect compensation, including information typically itemized on a commission schedule used to determine agent or broker compensation as well as an explanation of qualifying thresholds for the payment of indirect compensation to an agent or broker, with the invoice for the first premium payment for the initial coverage term and for each renewal period.
Issuer	New Enrollments vs. Renewed Enrollments	Commission schedules or other documents must distinguish between commission payments associated with new enrollments

RESPONSIBLE PARTY	DATA ELEMENT	DESCRIPTION
		and such payments for renewed enrollments if the issuer differentiates for those two types of enrollments.

Table 2: Agent and Broker Reporting Requirements

RESPONSIBLE PARTY	DATA ELEMENT	DESCRIPTION
Issuer	Payor Federal Tax ID Number (FTIN)	A unique nine-digit number assigned by the Internal Revenue Service to business entities operating in the United States for the purposes of identification.
Issuer	Recipient Identifier Type (“NPN” for writing agents or “FTIN” for payments made to intermediaries)	NPN – A unique identifier assigned through the National Association of Insurance Commissioner’s licensing application process. FTIN – See above definition
Issuer	Recipient Identifier Value	The actual compensation number
Issuer	The date on which the payment was made to the payment recipient	The date on which the payment was made to the payment recipient
Issuer	Direct Compensation, expressed as a dollar amount (the commission)	Monetary amounts, including sales and base commissions, paid by an issuer that are attributable directly to the policy, certificate, or contract of insurance and that are paid to an agent or broker for the sale, placement, or renewal of individual health insurance coverage or short-term, limited-duration insurance.
Issuer	Indirect Compensation, expressed as a dollar amount, if any	Payments by an issuer attributable indirectly to a policy, certificate, or contract of insurance to agents, brokers, and other persons for items other than sales and base commissions (for example, service fees, consulting fees, finders’ fees, profitability and persistency bonuses, awards, prizes, volume-based incentives, and non-monetary forms of compensation).
Issuer	The basis for indirect compensation	A text field allowing entry of what the grounds for the indirect compensation were (bonus, incentive, etc)

RESPONSIBLE PARTY	DATA ELEMENT	DESCRIPTION
Issuer	Other information specified by the Secretary	Reserved for making additions to future reporting elements, including distinguishing between individual health insurance coverage and short-term, limited-duration insurance, listing the appointment arrangement duration, and providing the number of plans the agent sold.

Paperwork Reduction Act Statement

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid Office of Management and Budget (OMB) control number. The Departments are seeking OMB approval for the model as part of the approval for a new OMB control number 0938-NEW. The time required to complete this information collection is estimated to average of one hour and fifteen minutes hours per respondent and per month, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. If you have comments concerning the accuracy of the time estimate(s) or suggestions for improving this form, please write to: CMS, 7500 Security Boulevard, Attn: PRA Reports Clearance Officer, Mail Stop C4-26-05, Baltimore, Maryland 21244-1850.