

Supporting Statement for Agent and Broker Disclosure and Reporting Requirements (CMS-10787/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 agent and broker compensation associated with enrolling individuals in individual health insurance or short-term, limited-duration insurance (STLDI) 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 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 STLDI 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.

B. Justification

1. Need and Legal Basis

Consumers may enroll in individual insurance coverage by working with insurance agents or brokers. Agents or brokers are licensed in all states they assist consumers, and help determine eligibility, including in plan selection, explaining plan details, making plan recommendations, and generally answering consumer questions. Agents or brokers provide consumer services on behalf of one or more health insurance issuer in which they have appointment agreements. While in these relationships, agents or brokers frequently receive payments (e.g. commissions or bonuses) for selling those plans offered by the specific issuer.

Section 202(c) of the Consolidated Appropriations Act amended the PHS Act to add Section 2746, which requires issuers offering individual health insurance coverage or STLDI coverage to make disclosures regarding direct or indirect compensation provided by the issuer to an agent or broker to prospective enrollees and report such compensation to the Secretary of HHS. Sections 2746(b) and 2746(c) detail the specific requirements for disclosure and reporting, respectively. Section 2746(b) of the PHS Act, as amended, states this disclosure must be made: (1) prior to the individual finalizing plan selection and (2) included on any documentation confirming the

individual's enrollment. Section 2746(c) states issuers must report commissions on an annual basis to the Secretary of HHS.

2. Information Users

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.

3. Use of Information Technology

HHS would create an online collection form in the Health Insurance Oversight System (HIOS) to collect data provided by issuers in a standardized format and process. This standardized form and process would allow HHS to collect information and analyze its accuracy and completeness, while allowing HHS the ability to determine which issuers have and have not submitted the required information.

4. Duplication of Efforts

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

5. Small Businesses

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 through disclosure to occur prior to

finalizing plan selection and on documentation confirming enrollment. It requires the collection of information through reporting annually. These collection instances are required by the statute so it cannot be less frequent than that.

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.

HHS has conducted a listening session with agents and brokers to gather their input and thoughts on the section 2746 requirements.

9. Payments/Gifts to Respondents

No payments and/or gifts will be provided to respondents.

10. Confidentiality

There are no confidentiality issues with this collection as the reporting that will stem from data collection will only be de-identified report(s).

11. Sensitive Questions

There are no sensitive questions are 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.¹ Table 1 in these proposed rules 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 is of the view that doubling the hourly wage to estimate total cost is a reasonably accurate estimation method.

Table 1: Adjusted Hourly Wages Used in Burden Estimates

¹ 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.

Occupation Title	Occupational Code	Mean Hourly Wage (\$/hr.)	Fringe Benefits and Overhead (\$/hr.)	Adjusted Hourly Wage (\$/hr.)
Secretaries and Administrative Assistants, Except Legal, Medical, and Executive	43-6014	\$19.43	\$19.43	\$38.86
Database Administrator	15-1245	\$48.60	\$48.60	\$97.20
Lawyer	23-1011	\$71.59	\$71.59	\$143.18
Insurance Sales Agents	41-3021	\$33.22	\$33.22	\$66.44

The following subsections of this document contain estimates of the burdens imposed by the ICRs. These burdens reflect the time and effort for issuers of individual health insurance plans and issuers of short-term, limited-duration health insurance plans to disclose agent and broker compensation, as well as collect and submit the data in the required format to HHS.

Disclosure of Agent and Broker Compensation to Individuals in Individual Health Insurance Coverage and Short-Term, Limited-Duration Insurance (45 CFR 148.410(c)(2)(i)-(ii), 148.410(c)(3), 148.410(c)(4))

As discussed in section III.B of the preamble of the Reporting Requirements Regarding Air Ambulance Services, Agent and Broker Disclosures, and Provider Enforcement proposed rules, section 2746 of the PHS Act, as added by section 202(c) of title II of Division BB of the CAA, requires health insurance issuers offering individual health insurance coverage or short-term, limited-duration insurance to make disclosures to enrollees regarding direct and indirect compensation provided by the issuer to an agent or broker associated with enrolling individuals in such coverage, prior to when the individual finalizes their plan selection, as well as on any documentation confirming the individual's enrollment, including enrollment documentation required in applicable state or federal law or an initial enrollment package. At newly proposed 45 CFR 148.410(c), HHS proposes to codify these disclosure requirements.

HHS assumes that the compensation information to be provided to potential policyholders prior to finalizing enrollment would be provided by agents and brokers on behalf of issuers. As discussed in section III.B of the preamble of these proposed rules, HHS anticipates the required information would be provided in the form of a commission schedule, a similar document satisfying the requirements of 45 CFR 148.410(c)(5), or a supplemental document detailing additional compensation not on the commission schedule, detailing the compensation structure of agents and brokers who assist consumers in enrolling in and purchasing individual health insurance coverage or short-term, limited-duration insurance. HHS anticipates that the burden associated with the disclosure requirement, prior to implementation, will include review by a lawyer. HHS assumes that a lawyer for each issuer will need 2 hours (at an hourly rate of \$143.18) to review the regulation, and prepare instructions for issuers to relay to individual agents and brokers to implement the disclosure requirements. The burden for each issuer would be 2 hours, with an equivalent cost of approximately \$286. There are an estimated 1,298 issuers

in the individual market² and 26 issuers of short-term, limited-duration insurance coverage,³ for a total of 1,324 issuers. Therefore, the total annual burden to all issuers to implement the disclosure requirement would be 2,648 hours with an equivalent cost of approximately \$379,141. The review of the statute, regulation, and issuer's implementation plan would likely occur annually to ensure compliance with any potential changes to the regulation. HHS assumes that each agent or broker would need 30 minutes (at an hourly rate of \$66.44) annually to review the requirements and the instructions from issuers. The total burden for each agent or broker would be 0.5 hours with an equivalent cost of approximately \$33. As of June 10, 2021, there were 55,541 agents or brokers working with issuers and each agent or broker had approximately two appointment arrangements which are mandated by state law and govern the compensation provided to agents and brokers for assisting consumers.⁴ Therefore, the total burden for all agents and brokers, to review instructions from the issuers with which they have appointment arrangements, would be 27,771 hours, with an equivalent cost of approximately \$1,845,072.

HHS estimates the cost associated with this disclosure requirement, when provided in situations related to in-person enrollment in coverage, to be limited to only printing and material costs. HHS estimates that each commission schedule would be, on average, 4 pages in length, at a cost of \$0.05 per page, for a total of \$0.20 per provided schedule. Printing of supplemental documentation disclosing compensation not included on the commission schedule would be, on average, 2 pages in length, at a cost of \$0.05 per page, for a total of \$0.10 per provided supplemental document. HHS assumes, based on experience with the regulation of insurance agents and brokers operating on the Federally-facilitated Exchanges and State-based Exchanges on the Federal Platform, that for most consumers, the information would be provided electronically or orally at minimal cost. HHS assumes that each agent or broker would provide, on average, ten commission schedules and ten supplemental documents in print to consumers annually from each arrangement, for a total of 20 commission schedules and 20 supplemental documents provided in print. Each agent or broker would incur an annual printing cost of approximately \$6. For all agents and brokers, HHS estimates that a total of 1,110,820 printed commission schedules and 1,110,820 printed supplemental documents would be provided to consumers, for a total printing cost of \$333,246 annually. HHS assumes that agents and brokers would be compensated by issuers for the printing costs associated with providing the compensation schedules and supplemental documents to consumers. Therefore, HHS estimates that each issuer, on average, would incur printing costs of approximately \$252 annually, as well as a three-year average, starting in 2022. The total costs to all issuers for disclosures provided prior to enrollment, including printing costs, would be approximately \$712,387.

Table 2: Proposed Annual Ongoing Costs Regarding Disclosure of Agent and Broker Compensation to Enrollees Prior to Enrollment

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

³ National Association of Insurance Commissioners, 2019 Accident and Health Policy Experience Report. <https://content.naic.org/sites/default/files/publication-ahp-lr-accident-health-report.pdf>.

⁴ Based on information found in the National Insurance Producer Registry's Producer Database (PDB).

Respondent	Estimated Number of Respondents	Estimated Number of Responses	Estimated Burden (Hours)	Estimated Labor Costs (\$)	Estimated Printing costs	Estimated Total Cost (\$)
Issuer	1,324	1,110,820	2,648	\$379,141	\$333,246	\$712,387
Agents and Brokers	55,541	55,541	27,771	\$1,845,072	0	\$1,845,072

Issuers would also be required to provide an agent or broker compensation disclosure to individuals on documentation confirming enrollment, including enrollment documentation required by applicable state or federal law or an initial enrollment package. HHS assumes that the disclosure and supplemental documentation disclosing compensation not included on the commission schedule provided along with documentation confirming enrollment would be available to all enrollees in the same coverage, in the same household, via the policyholder receiving the disclosure information and informing all enrollees on the plan. There are an estimated 1,298 issuers in the individual market providing approximately 8,639,866 enrollment confirmations annually, and 26 issuers of short-term, limited-duration insurance providing approximately 121,038 enrollment confirmations annually. HHS assumes that 50 percent of policyholders with individual health insurance coverage⁵ and all policyholders with short-term, limited-duration insurance are assisted by agents or brokers.

In the individual market, 1,298 issuers would be required to provide commission schedules or similar documentation, and supplemental documentation detailing the structure for compensation not captured on the commission schedule, along with approximately 4,319,933 enrollment confirmations, 3,328 on average per issuer. HHS estimates that approximately 66 percent of commission schedules and supplemental documents (2,851,156 disclosures) would be mailed to individuals (34 percent sent electronically)⁶ in conjunction with any documents confirming enrollment or renewal notice with no additional mailing costs. Therefore, each issuer would provide approximately 2,197 commission schedules or similar documentation, as well as the supplemental documents by mail annually. HHS assumes that for each issuer, an administrative assistant would need 5 minutes (at an hourly rate of \$38.86) to print and enclose a commission schedule or similar documentation, as well as the supplemental document, with the enrollment confirmation or renewal notice, for a cost of \$3.24 per commission schedule or similar documentation, and the supplemental documentation. The total burden for each issuer would be approximately 183 hours, with an equivalent cost of approximately \$7,113 annually. For all issuers, the total annual burden would be 237,596 hours with an equivalent cost of approximately \$9,232,993. Assuming that the cost of printing each commission schedule or similar documentation would be \$0.20, and the cost of printing each supplemental document would be \$0.10, the average cost of printing for each issuer would be approximately \$659 annually and the

⁵ Agents and brokers accounted for 47.8 percent of all consumers enrolled during the plan year 2020 open enrollment period. Source: CMS, Agents and Brokers in the Marketplace. <https://www.cms.gov/CCIIO/Resources/Forms-Reports-and-Other-Resources/Downloads/Agents-and-Brokers-in-the-Marketplace.pdf>.

⁶ 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>.

total cost of printing for all issuers would be approximately \$855,347. The total annual cost for all issuers, including printing costs, would be \$10,088,340.

For short-term, limited-duration insurance, 26 issuers would be required to provide commission schedules or similar documentation, as well as supplemental documentation detailing the structure for compensation not captured on the commission schedule, along with approximately 121,038 enrollment confirmations, 4,655 on average per issuer. HHS estimates that approximately 66 percent of commission schedules or similar documentation, and supplemental documents (79,885 disclosures) would be mailed to individuals in conjunction with any documents confirming enrollment or renewal notice with no additional mailing costs. Therefore, each issuer would provide approximately 3,073 commission schedules or similar documentation, and supplemental documentation, by mail annually. HHS assumes that for each issuer, an administrative assistant would need 5 minutes (at an hourly rate of \$38.86) to print and enclose a commission schedule or similar documentation, and the supplemental documentation, with the enrollment confirmation or renewal notice, for a cost of \$3.24 per disclosure. The total burden for each issuer would be approximately 256 hours, with an equivalent cost of approximately \$9,950 annually. For all issuers, the total annual burden would be 6,657 hours with an equivalent cost of approximately \$258,695. Assuming that the cost of printing each commission schedule or similar documentation would be \$0.20, and the cost of printing each supplemental document would be \$0.10, the average cost of printing for each issuer would be approximately \$35 annually and the total printing cost for all issuers would be \$922. The total annual cost for all issuers, including printing costs would be \$259,616.

For issuers of individual health insurance coverage or issuers of short-term, limited-duration insurance, the total combined burden for providing disclosures and supplemental documents with enrollment materials would be 244,253 hours, with an equivalent cost of \$9,491,687. The total annual, as well as three-year average, printing cost would be \$856,268, with an overall annual, as well as three-year average, total cost of \$10,347,956.

Table 3: Proposed Annual Ongoing Costs Related to Agent and Broker Compensation Disclosure Provided with Enrollment Materials

Type of Coverage	Estimated Number of Respondents	Estimated Number of Responses	Total Burden (Hours)	Estimated Labor Cost	Estimated Printing Cost	Estimated Total Cost
Individual health insurance coverage	1,298	4,319,933	237,596	\$9,232,993	\$855,347	\$10,088,340
Short-term, limited-duration insurance	26	121,038	6,657	\$258,695	\$922	\$259,616
Total	1,324	4,440,971	244,253	\$9,491,687	\$856,268	\$10,347,956

Issuer Requirements for Agent and Broker Compensation Reporting to the Secretary of HHS (45 CFR 148.410(d))

As discussed in section III.B of the preamble, section 2746 of the PHS Act, as added by section 202(c) of title II of Division BB of the CAA, requires health insurance issuers offering individual health insurance coverage or short-term, limited-duration insurance to 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. HHS is proposing to codify these reporting requirements in new proposed 45 CFR 148.410(d).

HHS estimates that each issuer would incur an annual ongoing burden and cost to submit the required information annually to HHS, starting in 2023 (reporting for calendar year 2022 would be due by July 31, 2023). HHS acknowledges that the burden associated with this reporting requirement would vary depending on the size of the issuer. HHS estimates that for each issuer, on average, an administrative assistant would need 10 hours (at an hourly rate of \$38.86) and a database administrator would need 40 hours (at an hourly rate of \$97.20) to collect and submit the required information, as described in section III.B of the preamble, electronically. HHS estimates that each issuer would incur an annual ongoing burden of 50 hours, with an associated equivalent cost of \$4,277. For all 1,324 issuers, HHS estimates a total annual, as well as three-year average, ongoing burden of 66,200 hours and an associated total annual, as well as three-year average, cost of \$5,662,218. HHS believes the burden and costs would decrease in subsequent years as issuers become more adept at extracting the data from their systems and submitting it to HHS.

Table 4: Proposed Annual Ongoing Costs Regarding Issuer Reporting of Agent and Broker Compensation to HHS

Estimated Number of Respondents	Estimated Number of Responses	Burden per Response (hours)	Total Estimated Annual Burden (hours)	Total Estimated Labor Cost
1,324	1,324	50	66,200	\$5,662,218

13. Capital Costs

There are no capital costs associated with these information collections.

14. Cost to Federal Government

HHS estimates an FY 2021 cost of \$1 million, an FY 2022 cost of \$2.5 million, and an FY 2023 cost of \$2.5 million. These estimates include costs associated with the initial development and building of the HIOS reporting database in FY 2022, potentially large database enhancements, training, and operations support in FY 2023, as well as the time to review and analyze the data each year. In subsequent years, HHS assumes the costs associated with database management,

marginal improvements, and review and analysis of the data would amount to approximately \$500,000 per year.

15. Changes to Burden

This is a new information collection request.

16. Publication/Tabulation Dates

Results of the collection will not be made public.

17. Expiration Date

The expiration date and OMB control number will appear on the first page of Appendix 1 (top-right corner).