

119TH CONGRESS
1ST SESSION

S. _____

To amend title XXVII of the Public Health Service Act, the Employee Retirement Income Security Act of 1974, and the Internal Revenue Code of 1986 to increase penalties for group health plans, health insurance issuers, and nonparticipating providers or facilities for practices that violate balance billing requirements, and for other purposes.

IN THE SENATE OF THE UNITED STATES

Mr. MARSHALL (for himself and Mr. BENNET) introduced the following bill;
which was read twice and referred to the Committee on

A BILL

To amend title XXVII of the Public Health Service Act, the Employee Retirement Income Security Act of 1974, and the Internal Revenue Code of 1986 to increase penalties for group health plans, health insurance issuers, and nonparticipating providers or facilities for practices that violate balance billing requirements, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “No Surprises Act En-
3 forcement Act”.

4 **SEC. 2. INCREASING PENALTIES FOR GROUP HEALTH**
5 **PLANS AND HEALTH INSURANCE ISSUERS**
6 **FOR PRACTICES THAT VIOLATE BALANCE**
7 **BILLING REQUIREMENTS.**

8 (a) PHSA.—Section 2723(b)(2)(C) of the Public
9 Health Service Act (42 U.S.C. 300gg–22(b)(2)(C)) is
10 amended—

11 (1) in clause (i), by inserting “(or, in the case
12 of such a failure with respect to a provision specified
13 in clause (iv), \$10,000 per violation)” after “\$100”;
14 and

15 (2) by adding at the end the following new
16 clause:

17 “(iv) PROVISIONS SPECIFIED.—For
18 purposes of clause (i), the provisions speci-
19 fied in this clause are the following:

20 “(I) Subparagraphs (A) and (B)
21 of section 2799A–1(a)(1).

22 “(II) Clauses (i), (ii), (iii), and
23 (v) of section 2799A–1(a)(1)(C).

24 “(III) Subparagraphs (A), (B),
25 and (E) of section 2799A–1(b)(1).

1 “(IV) Paragraphs (1) and (2) of
2 section 2799A–2(a).”.

3 (b) ERISA.—Section 502 of the Employee Retire-
4 ment Income Security Act of 1974 (29 U.S.C. 1131) is
5 amended—

6 (1) in subsection (a)(6), by striking “or (9)”
7 and inserting “(9), or (12)”;

8 (2) in subsection (b)(3)—

9 (A) by inserting “, (c)(12),” after “sub-
10 sections (c)(9)”;

11 (B) by inserting “or (c)(12)” after “under
12 subsection (c)(9)”;

13 (3) in subsection (c), by adding at the end the
14 following new paragraph:

15 “(12) The Secretary may assess a civil penalty
16 against any group health plan or health insurance issuer
17 offering group health insurance coverage of not more than
18 \$10,000 per violation for each individual with respect to
19 which such plan or coverage fails to comply with one of
20 the following provisions:

21 “(A) Subparagraphs (A) and (B) of section
22 716(a)(1).

23 “(B) Clauses (i), (ii), (iii), and (v) of section
24 716(a)(1)(C).

1 “(C) Subparagraphs (A), (B), and (E) of sec-
2 tion 716(b)(1).

3 “(D) Paragraphs (1) and (2) of section
4 717(a).”.

5 (c) IRC.—Section 4980D(b) of the Internal Revenue
6 Code of 1986 is amended—

7 (1) in paragraph (1), by inserting “(or, in the
8 case of such a failure with respect to a provision
9 specified in paragraph (4), \$10,000)” after “\$100”;
10 and

11 (2) by adding at the end the following new
12 paragraph:

13 “(4) PROVISIONS SPECIFIED.—For purposes of
14 paragraph (1), the provisions specified in this para-
15 graph are the following:

16 “(A) Subparagraphs (A) and (B) of section
17 9816(a)(1).

18 “(B) Clauses (i), (ii), (iii), and (v) of sec-
19 tion 9816(a)(1)(C).

20 “(C) Subparagraphs (A), (B), and (E) of
21 section 9816(b)(1).

22 “(D) Paragraphs (1) and (2) of section
23 9817(a).”.

1 **SEC. 3. ADDITIONAL PENALTIES FOR LATE PAYMENT OR**
2 **NON-PAYMENT AFTER IDR ENTITY PAYMENT**
3 **DETERMINATION.**

4 (a) PHSA.—

5 (1) EMERGENCY AND NONEMERGENCY SERV-
6 ICES.—Section 2799A–1(c)(6) of the Public Health
7 Service Act (42 U.S.C. 300gg–111(c)(6)) is amend-
8 ed—

9 (A) in the paragraph heading, by inserting
10 “; PENALTY FOR LATE PAYMENT OR NON-PAY-
11 MENT” after “PAYMENT”;

12 (B) by striking “The total plan” and in-
13 serting the following:

14 “(A) TIMING OF PAYMENT.—The total
15 plan”;

16 (C) in subparagraph (A), as so inserted, by
17 adding at the end the following new sentence:
18 “In the case such determination is an amount
19 less than the sum of the initial payment for
20 such item or service and any cost sharing re-
21 quired to be paid by the individual receiving
22 such item or service, the nonparticipating pro-
23 vider or facility furnishing such item or service
24 shall pay to such plan or coverage the dif-
25 ference between such determination and such

1 sum not later than 30 days after the date on
2 which such determination is made.”; and

3 (D) by adding at the end the following new
4 subparagraphs:

5 “(B) NOTIFICATION.—In the case of a
6 plan or coverage, or a nonparticipating provider
7 or facility, required to make a payment pursu-
8 ant to a determination described in subpara-
9 graph (A), such plan or coverage or nonpartici-
10 pating provider or facility shall submit to the
11 Secretary a notification of such payment as of
12 the date such payment is made in a manner
13 specified by the Secretary.

14 “(C) PENALTY FOR LATE PAYMENT OR
15 NON-PAYMENT.—

16 “(i) IN GENERAL.—In the case of a
17 plan or coverage, or a nonparticipating
18 provider or facility, that has not made the
19 required payment described in subpara-
20 graph (A) with respect to an item or serv-
21 ice in the time period described in such
22 subparagraph, in addition to making such
23 payment, such plan or coverage or non-
24 participating provider or facility shall also
25 pay to the nonparticipating provider or fa-

1 cility or plan or coverage (as applicable) an
2 amount that is three times the difference
3 between—

4 “(I) the initial payment (or, in
5 the case of a notice of denial of pay-
6 ment, \$0) described in subsection
7 (a)(1)(C)(iv)(I) or (b)(1)(C), as appli-
8 cable; and

9 “(II) the out-of-network rate (as
10 defined in subsection (a)(3)(K)) for
11 such item or service (less any cost
12 sharing required to be paid by the in-
13 dividual receiving such item or serv-
14 ice).

15 “(ii) INTEREST.—A late payment pen-
16 alty under clause (i) shall also be subject
17 to interest in a manner specified by the
18 Secretary.”.

19 (2) AIR AMBULANCE SERVICES.—Section
20 2799A–2(b)(6) of the Public Health Service Act (42
21 U.S.C. 300gg–112(b)(6)) is amended—

22 (A) in the paragraph heading, by inserting
23 “; PENALTY FOR LATE PAYMENT OR NON-PAY-
24 MENT” after “PAYMENT”;

1 (B) by striking “The total plan” and in-
2 serting the following:

3 “(A) TIMING OF PAYMENT.—The total
4 plan”;

5 (C) in subparagraph (A), as so inserted, by
6 adding at the end the following new sentence:
7 “In the case such determination is an amount
8 less than the sum of the initial payment for
9 such item or service and any cost sharing re-
10 quired to be paid by the individual receiving
11 such item or service, the nonparticipating pro-
12 vider or facility furnishing such item or service
13 shall pay to such plan or coverage the dif-
14 ference between such determination and such
15 sum not later than 30 days after the date on
16 which such determination is made.”; and

17 (D) by adding at the end the following new
18 subparagraphs:

19 “(B) NOTIFICATION.—In the case of a
20 plan or coverage, or a nonparticipating provider
21 or facility, required to make a payment pursu-
22 ant to a determination described in subpara-
23 graph (A), such plan or coverage or nonparti-
24 cipating provider or facility shall submit to the
25 Secretary a notification of such payment as of

1 the date such payment is made in a manner
2 specified by the Secretary.

3 “(C) PENALTY FOR LATE PAYMENT OR
4 NON-PAYMENT.—

5 “(i) IN GENERAL.—In the case of a
6 plan or coverage, or a nonparticipating
7 provider or facility, that has not made the
8 required payment described in subpara-
9 graph (A) with respect to an item or serv-
10 ice in the time period described in such
11 subparagraph, in addition to making such
12 payment, such plan or coverage or non-
13 participating provider or facility shall also
14 pay to the nonparticipating provider or fa-
15 cility or plan or coverage (as applicable) an
16 amount that is three times the difference
17 between—

18 “(I) the initial payment (or, in
19 the case of a notice of denial of pay-
20 ment, \$0) described in subsection
21 (a)(3)(A); and

22 “(II) the out-of-network rate (as
23 defined in section 2799–1(a)(3)(K))
24 for such item or service (less any cost
25 sharing required to be paid by the in-

1 dividual receiving such item or serv-
2 ice).

3 “(ii) INTEREST.—A late payment pen-
4 alty under clause (i) shall also be subject
5 to interest in a manner specified by the
6 Secretary.”.

7 (b) ERISA.—

8 (1) EMERGENCY AND NONEMERGENCY SERV-
9 ICES.—Section 716(c)(6) of the Employee Retire-
10 ment Income Security Act of 1974 (29 U.S.C.
11 1185e(c)(6)) is amended—

12 (A) in the paragraph heading, by inserting
13 “; PENALTY FOR LATE PAYMENT OR NON-PAY-
14 MENT” after “PAYMENT”;

15 (B) by striking “The total plan” and in-
16 serting the following:

17 “(A) TIMING OF PAYMENT.—The total
18 plan”;

19 (C) in subparagraph (A), as so inserted, by
20 adding at the end the following new sentence:
21 “‘In the case such determination is an amount
22 less than the sum of the initial payment for
23 such item or service and any cost sharing re-
24 quired to be paid by the individual receiving
25 such item or service, the nonparticipating pro-

1 vider or facility furnishing such item or service
2 shall pay to such plan or coverage the dif-
3 ference between such determination and such
4 sum not later than 30 days after the date on
5 which such determination is made.”; and

6 (D) by adding at the end the following new
7 subparagraphs:

8 “(B) NOTIFICATION.—In the case of a
9 plan or coverage, or a nonparticipating provider
10 or facility, required to make a payment pursu-
11 ant to a determination described in subpara-
12 graph (A), such plan or coverage or nonpartici-
13 pating provider or facility shall submit to the
14 Secretary a notification of such payment as of
15 the date such payment is made in a manner
16 specified by the Secretary.

17 “(C) PENALTY FOR LATE PAYMENT OR
18 NON-PAYMENT.—

19 “(i) IN GENERAL.—In the case of a
20 plan or coverage, or a nonparticipating
21 provider or facility, that has not made the
22 required payment described in subpara-
23 graph (A) with respect to an item or serv-
24 ice in the time period described in such
25 subparagraph, in addition to making such

1 payment, such plan or coverage or non-
2 participating provider or facility shall also
3 pay to the nonparticipating provider or fa-
4 cility or plan or coverage (as applicable) an
5 amount that is three times the difference
6 between—

7 “(I) the initial payment (or, in
8 the case of a notice of denial of pay-
9 ment, \$0) described in subsection
10 (a)(1)(C)(iv)(I) or (b)(1)(C), as appli-
11 cable; and

12 “(II) the out-of-network rate (as
13 defined in subsection (a)(3)(K)) for
14 such item or service (less any cost
15 sharing required to be paid by the in-
16 dividual receiving such item or serv-
17 ice).

18 “(ii) INTEREST.—A late payment pen-
19 alty under clause (i) shall also be subject
20 to interest in a manner specified by the
21 Secretary.”.

22 (2) AIR AMBULANCE SERVICES.—Section
23 717(b)(6) of the Employee Retirement Income Secu-
24 rity Act of 1974 (29 U.S.C. 1185f(b)(6)) is amend-
25 ed—

1 (A) in the paragraph heading, by inserting
2 “; PENALTY FOR LATE PAYMENT OR NON-PAY-
3 MENT” after “PAYMENT”;

4 (B) by striking “The total plan” and in-
5 serting the following:

6 “(A) TIMING OF PAYMENT.—The total
7 plan”;

8 (C) in subparagraph (A), as so inserted, by
9 adding at the end the following new sentence:
10 “In the case such determination is an amount
11 less than the sum of the initial payment for
12 such item or service and any cost sharing re-
13 quired to be paid by the individual receiving
14 such item or service, the nonparticipating pro-
15 vider or facility furnishing such item or service
16 shall pay to such plan or coverage the dif-
17 ference between such determination and such
18 sum not later than 30 days after the date on
19 which such determination is made.”; and

20 (D) by adding at the end the following new
21 subparagraphs:

22 “(B) NOTIFICATION.—In the case of a
23 plan or coverage, or a nonparticipating provider
24 or facility, required to make a payment pursu-
25 ant to a determination described in subpara-

graph (A), such plan or coverage or nonparticipating provider or facility shall submit to the Secretary a notification of such payment as of the date such payment is made in a manner specified by the Secretary.

“(C) PENALTY FOR LATE PAYMENT OR NON-PAYMENT.—

“(i) IN GENERAL.—In the case of a plan or coverage, or a nonparticipating provider or facility, that has not made the required payment described in subparagraph (A) with respect to an item or service in the time period described in such subparagraph, in addition to making such payment, such plan or coverage or nonparticipating provider or facility shall also pay to the nonparticipating provider or facility or plan or coverage (as applicable) an amount that is three times the difference between—

“(I) the initial payment (or, in the case of a notice of denial of payment, \$0) described in subsection (a)(3)(A); and

1 “(II) the out-of-network rate (as
2 defined in section 716(a)(3)(K)) for
3 such item or service (less any cost
4 sharing required to be paid by the in-
5 dividual receiving such item or serv-
6 ice).

7 “(ii) INTEREST.—A late payment pen-
8 alty under clause (i) shall also be subject
9 to interest in a manner specified by the
10 Secretary.”.

11 (c) IRC.—

12 (1) EMERGENCY AND NONEMERGENCY SERV-
13 ICES.—Section 9816(c)(6) of the Internal Revenue
14 Code of 1986 is amended—

15 (A) in the paragraph heading, by inserting
16 “; PENALTY FOR LATE PAYMENT OR NON-PAY-
17 MENT” after “PAYMENT”;

18 (B) by striking “The total plan” and in-
19 serting the following:

20 “(A) TIMING OF PAYMENT.—The total
21 plan”;

22 (C) in subparagraph (A), as so inserted, by
23 adding at the end the following new sentence:
24 “In the case such determination is an amount
25 less than the sum of the initial payment for

1 such item or service and any cost sharing re-
2 quired to be paid by the individual receiving
3 such item or service, the nonparticipating pro-
4 vider or facility furnishing such item or service
5 shall pay to such plan the difference between
6 such determination and such sum not later than
7 30 days after the date on which such deter-
8 mination is made.”; and

9 (D) by adding at the end the following new
10 subparagraphs:

11 “(B) NOTIFICATION.—In the case of a
12 plan, or a nonparticipating provider or facility,
13 required to make a payment pursuant to a de-
14 termination described in subparagraph (A),
15 such plan or nonparticipating provider or facil-
16 ity shall submit to the Secretary a notification
17 of such payment as of the date such payment
18 is made in a manner specified by the Secretary.

19 “(C) PENALTY FOR LATE PAYMENT OR
20 NON-PAYMENT.—

21 “(i) IN GENERAL.—In the case of a
22 plan, or a nonparticipating provider or fa-
23 cility, that has not made the required pay-
24 ment described in subparagraph (A) with
25 respect to an item or service in the time

1 period described in such subparagraph, in
2 addition to making such payment, such
3 plan or nonparticipating provider or facil-
4 ity shall also pay to the nonparticipating
5 provider or facility or plan (as applicable)
6 an amount that is three times the dif-
7 ference between—

8 “(I) the initial payment (or, in
9 the case of a notice of denial of pay-
10 ment, \$0) described in subsection
11 (a)(1)(C)(iv)(I) or (b)(1)(C), as appli-
12 cable; and

13 “(II) the out-of-network rate (as
14 defined in subsection (a)(3)(K)) for
15 such item or service (less any cost
16 sharing required to be paid by the in-
17 dividual receiving such item or serv-
18 ice).

19 “(ii) INTEREST.—A late payment pen-
20 alty under clause (i) shall also be subject
21 to interest in a manner specified by the
22 Secretary.”.

23 (2) AIR AMBULANCE SERVICES.—Section
24 9817(b)(6) of the Internal Revenue Code of 1986 is
25 amended—

1 (A) in the paragraph heading, by inserting
2 “; PENALTY FOR LATE PAYMENT OR NON-PAY-
3 MENT” after “PAYMENT”;

4 (B) by striking “The total plan” and in-
5 serting the following:

6 “(A) TIMING OF PAYMENT.—The total
7 plan”;

8 (C) in subparagraph (A), as so inserted, by
9 adding at the end the following new sentence:
10 “In the case such determination is an amount
11 less than the sum of the initial payment for
12 such item or service and any cost sharing re-
13 quired to be paid by the individual receiving
14 such item or service, the nonparticipating pro-
15 vider or facility furnishing such item or service
16 shall pay to such plan the difference between
17 such determination and such sum not later than
18 30 days after the date on which such deter-
19 mination is made.”; and

20 (D) by adding at the end the following new
21 subparagraphs:

22 “(B) NOTIFICATION.—In the case of a
23 plan, or a nonparticipating provider or facility,
24 required to make a payment pursuant to a de-
25 termination described in subparagraph (A),

1 such plan or nonparticipating provider or facil-
2 ity shall submit to the Secretary a notification
3 of such payment as of the date such payment
4 is made in a manner specified by the Secretary.

5 “(C) PENALTY FOR LATE PAYMENT OR
6 NON-PAYMENT.—

7 “(i) IN GENERAL.—In the case of a
8 plan, or a nonparticipating provider or fa-
9 cility, that has not made the required pay-
10 ment described in subparagraph (A) with
11 respect to an item or service in the time
12 period described in such subparagraph, in
13 addition to making such payment, such
14 plan or nonparticipating provider or facil-
15 ity shall also pay to the nonparticipating
16 provider or facility or plan (as applicable)
17 an amount that is three times the dif-
18 ference between—

19 “(I) the initial payment (or, in
20 the case of a notice of denial of pay-
21 ment, \$0) described in subsection
22 (a)(3)(A); and

23 “(II) the out-of-network rate (as
24 defined in section 9816(a)(3)(K)) for
25 such item or service (less any cost

1 sharing required to be paid by the in-
2 dividual receiving such item or serv-
3 ice).

4 “(ii) INTEREST.—A late payment pen-
5 alty under clause (i) shall also be subject
6 to interest in a manner specified by the
7 Secretary.”.

8 **SEC. 4. TRANSPARENCY REPORTING REQUIREMENTS.**

9 (a) PHSA.—Section 2799A–1(a)(2)(A)(iii) of the
10 Public Health Service Act (42 U.S.C. 300gg–
11 111(a)(2)(A)(iii)) is amended to read as follows:

12 “(iii) REPORTING.—

13 “(I) INITIAL REPORTING.—Be-
14 ginning for 2022 and ending on De-
15 cember 31 of the calendar year in
16 which the No Surprises Act Enforce-
17 ment Act is enacted, the Secretary
18 shall annually submit to Congress a
19 report on the number of plans and
20 issuers with respect to which audits
21 were conducted during such year pur-
22 suant to this subparagraph.

23 “(II) SUBSEQUENT REPORT-
24 ING.—

1 “(aa) IN GENERAL.—With
2 respect to the first calendar year
3 following the date of the enact-
4 ment of the No Surprises Act
5 Enforcement Act, not later than
6 February 1 of such year, and
7 every 6 months thereafter, the
8 Secretary, in coordination with
9 the Secretary of Labor and the
10 Secretary of the Treasury, shall
11 submit to the Committee on
12 Ways and Means, the Committee
13 on Energy and Commerce, and
14 the Committee on Education and
15 the Workforce of the House of
16 Representatives, and the Com-
17 mittee on Finance and the Com-
18 mittee on Health, Education,
19 Labor and Pensions of the Sen-
20 ate, a report on any audits con-
21 ducted pursuant to this subpara-
22 graph during the applicable re-
23 porting period, and any enforce-
24 ment actions taken during such
25 period in accordance with the

1 provisions of this part, includ-
2 ing—

3 “(AA) the total number
4 of audits conducted under
5 this subparagraph;

6 “(BB) the number of
7 audits conducted pursuant
8 to clause (ii)(I);

9 “(CC) the number of
10 complaints submitted by
11 providers and by partici-
12 pants, beneficiaries, and en-
13 rollees with respect to a vio-
14 lation of this part;

15 “(DD) any enforcement
16 actions taken as a result of
17 a complaint submitted by a
18 provider or by a participant,
19 a beneficiary, or an enrollee,
20 with respect to the provi-
21 sions of this part;

22 “(EE) the total number
23 of, and the aggregate dollar
24 amount of, any civil mone-

1 tary penalties issued in ac-
2 cordance with this part;

3 “(FF) a summary of
4 any non-monetary corrective
5 action taken against a group
6 health plan or health insur-
7 ance issuer offering group or
8 individual health insurance
9 coverage for a violation of
10 this part; and

11 “(GG) a description of
12 the 3 most commonly re-
13 ported violations of this
14 part.

15 “(bb) APPLICABLE REPORT-
16 ING PERIOD.—For purposes of
17 this subclause, the term ‘applica-
18 ble reporting period’ means the 6
19 month period prior to each report
20 submitted under item (aa).”.

21 (b) IRC.—Section 9816(a)(2)(A)(iii) of the Internal
22 Revenue Code of 1986 is amended to read as follows:

23 “(iii) REPORTING.—

24 “(I) INITIAL REPORTING.—Be-
25 ginning for 2022 and ending on De-

1 cember 31 of the calendar year in
2 which the No Surprises Act Enforce-
3 ment Act is enacted, the Secretary
4 shall annually submit to Congress a
5 report on the number of plans with
6 respect to which audits were con-
7 ducted during such year pursuant to
8 this subparagraph.

9 “(II) SUBSEQUENT REPORT-
10 ING.—

11 “(aa) IN GENERAL.—With
12 respect to the first calendar year
13 following the date of the enact-
14 ment of the No Surprises Act
15 Enforcement Act, not later than
16 February 1 of such year, and
17 every 6 months thereafter, the
18 Secretary, in coordination with
19 the Secretary of Labor and the
20 Secretary of Health and Human
21 Services, shall submit to the
22 Committee on Ways and Means,
23 the Committee on Energy and
24 Commerce, and the Committee
25 on Education and the Workforce

1 of the House of Representatives,
2 and the Committee on Finance
3 and the Committee on Health,
4 Education, Labor and Pensions
5 of the Senate, a report on audits
6 performed pursuant to this sub-
7 paragraph during the applicable
8 reporting period, and any en-
9 forcement actions taken during
10 such period in accordance with
11 the provisions of an applicable
12 section, including—

13 “(AA) the total number
14 of audits conducted under
15 this subparagraph;

16 “(BB) the number of
17 audits conducted pursuant
18 to clause (ii)(I);

19 “(CC) the number of
20 complaints submitted by
21 providers and by partici-
22 pants and beneficiaries with
23 respect to a violation of an
24 applicable section;

1 “(DD) any enforcement
2 actions taken pursuant to a
3 violation of an applicable
4 section;

5 “(EE) the total number
6 of, and the aggregate dollar
7 amount of, any civil mone-
8 tary penalties issued in ac-
9 cordance with an applicable
10 section;

11 “(FF) a summary of
12 any non-monetary corrective
13 action taken against a group
14 health plan for a violation of
15 an applicable section; and

16 “(GG) a description of
17 the 3 most commonly re-
18 ported violations of an appli-
19 cable section.

20 “(bb) DEFINITIONS.—In
21 this subclause:

22 “(AA) APPLICABLE RE-
23 PORTING PERIOD.—The
24 term ‘applicable reporting
25 period’ means the 6 month

1 period prior to each report
2 submitted under item (aa).
3 “(BB) APPLICABLE
4 SECTION.—The term ‘appli-
5 cable section’ means this
6 section and each of sections
7 9817 through 9825.”.