

118TH CONGRESS  
2D 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 and health insurance issuers for practices that violate balance billing requirements, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

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

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**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 and health insurance issuers 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,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “No Surprises Act En-  
5 forcement Act”.

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

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

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

12 (2) by adding at the end the following new  
13 clause:

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

17 “(I) Subparagraphs (A) and (B)  
18 of section 2799A–1(a)(1).

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

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

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

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

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

6 (2) in subsection (b)(3)—

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

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

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

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

19 “(A) Subparagraphs (A) and (B) of section  
20 716(a)(1).

21 “(B) Clauses (i), (ii), (iii), and (v) of section  
22 716(a)(1)(C).

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

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

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

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

9           (2) by adding at the end the following new  
10 paragraph:

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

14           “(A) Subparagraphs (A) and (B) of section  
15           9816(a)(1).

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

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

20           “(D) Paragraphs (1) and (2) of section  
21           9817(a).”.

22 **SEC. 3. ADDITIONAL PENALTIES FOR LATE PAYMENT OR**  
23 **NON-PAYMENT AFTER IDR ENTITY PAYMENT**  
24 **DETERMINATION.**

25           (a) PHSA.—



1 (A) with respect to an item or service in  
2 the time period described in such subpara-  
3 graph, in addition to making such pay-  
4 ment, such plan or coverage shall also pay  
5 to the nonparticipating provider or facility  
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.—Such late payment  
20 or non-payment (as applicable) shall also  
21 be subject to interest in a manner specified  
22 by the Secretary.”.

23 (2) AIR AMBULANCE SERVICES.—Section  
24 2799A–2(b)(6) of the Public Health Service Act (42  
25 U.S.C. 300gg–112(b)(6)) is 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”; and

8 (C) by adding at the end the following new  
9 subparagraphs:

10 “(B) NOTIFICATION.—In the case of a  
11 plan or coverage required to make a payment  
12 pursuant to a determination described in sub-  
13 paragraph (A), such plan or coverage shall sub-  
14 mit to the Secretary a notification of such pay-  
15 ment as of the date such payment is made in  
16 a manner 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 that has not made the re-  
21 quired payment described in subparagraph  
22 (A) with respect to an item or service in  
23 the time period described in such subpara-  
24 graph, in addition to making such pay-  
25 ment, such plan or coverage shall also pay

1 to the nonparticipating provider an amount  
2 that is three times the difference be-  
3 tween—

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)(3)(A); and

8 “(II) the out-of-network rate (as  
9 defined in section 2799–1(a)(3)(K))  
10 for such item or service (less any cost  
11 sharing required to be paid by the in-  
12 dividual receiving such item or serv-  
13 ice).

14 “(ii) INTEREST.—Such late payment  
15 or non-payment (as applicable) shall also  
16 be subject to interest in a manner specified  
17 by the Secretary.”.

18 (b) ERISA.—

19 (1) EMERGENCY AND NONEMERGENCY SERV-  
20 ICES.—Section 716(c)(6) of the Employee Retire-  
21 ment Income Security Act of 1974 (29 U.S.C.  
22 1185e(c)(6)) is amended—

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

5 (C) by adding at the end the following new  
6 subparagraphs:

7 “(B) NOTIFICATION.—In the case of a  
8 plan or coverage required to make a payment  
9 pursuant to a determination described in sub-  
10 paragraph (A), such plan or coverage shall sub-  
11 mit to the Secretary a notification of such pay-  
12 ment as of the date such payment is made in  
13 a manner 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 that has not made the re-  
18 quired payment described in subparagraph  
19 (A) with respect to an item or service in  
20 the time period described in such subpara-  
21 graph, in addition to making such pay-  
22 ment, such plan or coverage shall also pay  
23 to the nonparticipating provider or facility  
24 an amount that is three times the dif-  
25 ference between—

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

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

12                  “(ii) INTEREST.—Such late payment  
13                  or non-payment (as applicable) shall also  
14                  be subject to interest in a manner specified  
15                  by the Secretary.”.

16                  (2) AIR AMBULANCE SERVICES.—Section  
17                  717(b)(6) of the Employee Retirement Income Secu-  
18                  rity Act of 1974 (29 U.S.C. 1185f(b)(6)) is amend-  
19                  ed—

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

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

1           “(A) TIMING OF PAYMENT.—The total  
2 plan”; and

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

5           “(B) NOTIFICATION.—In the case of a  
6 plan or coverage required to make a payment  
7 pursuant to a determination described in sub-  
8 paragraph (A), such plan or coverage shall sub-  
9 mit to the Secretary a notification of such pay-  
10 ment as of the date such payment is made in  
11 a manner specified by the Secretary.

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

14           “(i) IN GENERAL.—In the case of a  
15 plan or coverage that has not made the re-  
16 quired payment described in subparagraph  
17 (A) with respect to an item or service in  
18 the time period described in such subpara-  
19 graph, in addition to making such pay-  
20 ment, such plan or coverage shall also pay  
21 to the nonparticipating provider an amount  
22 that is three times the difference be-  
23 tween—

24           “(I) the initial payment (or, in  
25 the case of a notice of denial of pay-

1                   ment, \$0) described in subsection  
2                   (a)(3)(A); and

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

9                   “(ii) INTEREST.—Such late payment  
10                  or non-payment (as applicable) shall also  
11                  be subject to interest in a manner specified  
12                  by the Secretary.”.

13                  (c) IRC.—

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

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

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

22                                 “(A) TIMING OF PAYMENT.—The total  
23                                 plan”; and

24                         (C) by adding at the end the following new  
25                         subparagraphs:

1           “(B) NOTIFICATION.—In the case of a  
2 plan required to make a payment pursuant to  
3 a determination described in subparagraph (A),  
4 such plan shall submit to the Secretary a notifi-  
5 cation of such payment as of the date such pay-  
6 ment is made in a manner specified by the Sec-  
7 retary.

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

10           “(i) IN GENERAL.—In the case of a  
11 plan that has not made the required pay-  
12 ment described in subparagraph (A) with  
13 respect to an item or service in the time  
14 period described in such subparagraph, in  
15 addition to making such payment, such  
16 plan shall also pay to the nonparticipating  
17 provider or facility an amount that is three  
18 times the difference 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)(1)(C)(iv)(I) or (b)(1)(C), as appli-  
23 cable; and

24           “(II) the out-of-network rate (as  
25 defined in subsection (a)(3)(K)) for

1 such item or service (less any cost  
2 sharing required to be paid by the in-  
3 dividual receiving such item or serv-  
4 ice).

5 “(ii) INTEREST.—Such late payment  
6 or non-payment (as applicable) shall also  
7 be subject to interest in a manner specified  
8 by the Secretary.”.

9 (2) AIR AMBULANCE SERVICES.—Section  
10 9817(b)(6) of the Internal Revenue Code of 1986 is  
11 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 sserting the following:

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

19 (C) by adding at the end the following new  
20 subparagraphs:

21 “(B) NOTIFICATION.—In the case of a  
22 plan required to make a payment pursuant to  
23 a determination described in subparagraph (A),  
24 such plan shall submit to the Secretary a notifi-  
25 cation of such payment as of the date such pay-

1           ment is made in a manner specified by the Sec-  
2           retary.

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

5                           “(i) IN GENERAL.—In the case of a  
6           plan that has not made the required pay-  
7           ment described in subparagraph (A) with  
8           respect to an item or service in the time  
9           period described in such subparagraph, in  
10          addition to making such payment, such  
11          plan shall also pay to the nonparticipating  
12          provider an amount that is three times the  
13          difference between—

14                                   “(I) the initial payment (or, in  
15           the case of a notice of denial of pay-  
16           ment, \$0) described in subsection  
17           (a)(3)(A); and

18                                   “(II) the out-of-network rate (as  
19           defined in section 9816(a)(3)(K)) for  
20           such item or service (less any cost  
21           sharing required to be paid by the in-  
22           dividual receiving such item or serv-  
23           ice).

24                                   “(ii) INTEREST.—Such late payment  
25           or non-payment (as applicable) shall also





1 every 6 months thereafter, the  
2 Secretary, in coordination with  
3 the Secretary of Labor and the  
4 Secretary of the Treasury, shall  
5 submit to the Committee on  
6 Ways and Means, the Committee  
7 on Energy and Commerce, and  
8 the Committee on Education and  
9 the Workforce of the House of  
10 Representatives, and the Com-  
11 mittee on Finance and the Com-  
12 mittee on Health, Education,  
13 Labor and Pensions of the Sen-  
14 ate, a report on any audits con-  
15 ducted pursuant to this subpara-  
16 graph during the applicable re-  
17 porting period, and any enforce-  
18 ment actions taken during such  
19 period in accordance with the  
20 provisions of this part, includ-  
21 ing—

22 “(AA) the total number  
23 of audits conducted under  
24 this subparagraph;

1 “(BB) the number of  
2 audits conducted pursuant  
3 to clause (ii)(I);

4 “(CC) the number of  
5 complaints submitted by  
6 providers and by partici-  
7 pants, beneficiaries, and en-  
8 rollees with respect to a vio-  
9 lation of this part;

10 “(DD) any enforcement  
11 actions taken as a result of  
12 a complaint submitted by a  
13 provider or by a participant,  
14 a beneficiary, or an enrollee,  
15 with respect to the provi-  
16 sions of this part;

17 “(EE) the total number  
18 of, and the aggregate dollar  
19 amount of, any civil mone-  
20 tary penalties issued in ac-  
21 cordance with this part;

22 “(FF) a summary of  
23 any non-monetary corrective  
24 action taken against a group  
25 health plan or health insur-

1                   ance issuer offering group or  
2                   individual health insurance  
3                   coverage for a violation of  
4                   this part; and

5                   “(GG) a description of  
6                   the 3 most commonly re-  
7                   ported violations of this  
8                   part.

9                   “(bb) APPLICABLE REPORT-  
10                  ING PERIOD.—For purposes of  
11                  this subclause, the term ‘applica-  
12                  ble reporting period’ means the 6  
13                  month period prior to each report  
14                  submitted under item (aa).”.

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

17                   “(iii) REPORTING.—

18                   “(I) INITIAL REPORTING.—Be-  
19                   ginning for 2022 and ending on De-  
20                   cember 31 of the calendar year in  
21                   which the No Surprises Act Enforce-  
22                   ment Act is enacted, the Secretary  
23                   shall annually submit to Congress a  
24                   report on the number of plans with  
25                   respect to which audits were con-

1 ducted during such year pursuant to  
2 this subparagraph.

3 “(II) SUBSEQUENT REPORT-  
4 ING.—

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

1 paragraph during the applicable  
2 reporting period, and any en-  
3 forcement actions taken during  
4 such period in accordance with  
5 the provisions of an applicable  
6 section, including—

7 “(AA) the total number  
8 of audits conducted under  
9 this subparagraph;

10 “(BB) the number of  
11 audits conducted pursuant  
12 to clause (ii)(I);

13 “(CC) the number of  
14 complaints submitted by  
15 providers and by partici-  
16 pants and beneficiaries with  
17 respect to a violation of an  
18 applicable section;

19 “(DD) any enforcement  
20 actions taken pursuant to a  
21 violation of an applicable  
22 section;

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

1            tary penalties issued in ac-  
2            cordance with an applicable  
3            section;

4            “(FF) a summary of  
5            any non-monetary corrective  
6            action taken against a group  
7            health plan for a violation of  
8            an applicable section; and

9            “(GG) a description of  
10           the 3 most commonly re-  
11           ported violations of an appli-  
12           cable section.

13           “(bb)        DEFINITIONS.—In  
14           this subclause:

15           “(AA) APPLICABLE RE-  
16           PORTING        PERIOD.—The  
17           term ‘applicable reporting  
18           period’ means the 6 month  
19           period prior to each report  
20           submitted under item (aa).

21           “(BB)        APPLICABLE  
22           SECTION.—The term ‘appli-  
23           cable section’ means this  
24           section and each of sections  
25           9817 through 9825.”.