



DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Affordable Care Act Internal Claims and Appeals and External Review Procedures for ERISA Plans

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Employee Benefits Security Administration (EBSA)-sponsored information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that the agency receives on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting "Currently under 30-day Review - Open for Public Comments" or by using the search function.

FOR FURTHER INFORMATION CONTACT: Michael Howell by telephone at 202-693-6782, or by email at DOL_PRA_PUBLIC@dol.gov.

SUPPLEMENTARY INFORMATION:

The Patient Protection and Affordable Care Act, Public Law 111-148, (the Affordable Care Act or the Act) was enacted on March 23, 2010. As part of the Act, Congress added Public Health Service Act (the PHS Act) section 2719, which provides rules relating to internal claims and appeals and external review processes. The Department of Labor, Internal Revenue Service, and the Health and Human Services

Department (the Departments) issued final regulations (80 FR 72191) that set forth rules implementing PHS Act section 2719 for internal claims and appeals and external review processes. With respect to internal claims and appeals processes for group health coverage, PHS Act section 2719 and paragraph (b)(2)(i) of the final regulations provide that group health plans and health insurance issuers offering group health insurance coverage must comply with the internal claims and appeals processes set forth in 29 CFR 2560.503-1 (the DOL claims procedure regulation) and update such processes in accordance with standards established by the Secretary of Labor in paragraph (b)(2)(ii) of the regulations.

The DOL claims procedure regulation requires plans to provide every claimant who is denied a claim with a written or electronic notice that contains the specific reasons for denial, a reference to the relevant plan provisions on which the denial is based, a description of any additional information necessary to perfect the claim, and a description of steps to be taken if the participant or beneficiary wishes to appeal the denial. The regulation also requires that any adverse decision upon review be in writing (including electronic means) and include specific reasons for the decision, as well as references to relevant plan provisions. Paragraph (b)(2)(ii)(C) of the final regulations adds a requirement that non-grandfathered ERISA-covered group health plans provide to the claimant, free of charge, any new or additional evidence considered relied upon, or generated by the plan or issuer in connection with the claim.

In addition, the PHS Act section 2719 and the final regulations provide that group health plans and issuers offering group health insurance coverage must comply either with a State external review process or a Federal review process. The regulations provide a basis for determining when plans and issuers must comply with an applicable State external review process and when they must comply with the Federal external review process.

The No Surprises Act extends the balance billing protection related to external reviews to grandfathered plans. The definitions of group health plan and health insurance issuer that are cited in section 110 of the No Surprises Act include both grandfathered and non-grandfathered plans and coverage. Accordingly, the practical effect of section 110 of the No Surprises Act is that grandfathered health plans must provide external review for adverse benefit determinations involving benefits subject to these surprise billing protections.

The claims procedure regulation imposes information collection requirements as part of the reasonable procedures that an employee benefit plan must establish regarding the handling of a benefit claim. These requirements include third-party notice and disclosure requirements that the plan must satisfy by providing information to participants and beneficiaries of the plan. For additional substantive information about this ICR, see the related notice published in the *Federal Register* on July 9, 2024 (89 FR 56416).

Comments are invited on: (1) whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other

provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid OMB Control Number. *See* 5 CFR 1320.5(a) and 1320.6.

DOL seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOL notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Agency: DOL-EBSA.

Title of Collection: Affordable Care Act Internal Claims and Appeals and External Review Procedures for ERISA Plans.

OMB Control Number: 1210-0144.

Affected Public: Private sector, Businesses or other for-profits, Not-for-profit institutions.

Total Estimated Number of Respondents: 1,294,150.

Total Estimated Number of Responses: 187,601.

Total Estimated Annual Time Burden: 18,370 hours.

Total Estimated Annual Other Costs Burden: \$ 613,741.

(Authority: 44 U.S.C. 3507(a)(1)(D))

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