

evaluated under a “framework similar to the rule of reason.”⁴ Competitive effects analysis under the rule of reason depends upon the nature of the conduct that is under review.⁵

An invitation to collude is “potentially harmful and . . . serves no legitimate business purpose.”⁶ For this reason, the Commission treats such conduct as “inherently suspect” (that is, presumptively anticompetitive).⁷ This means that an invitation to collude can be condemned under Section 5 without a showing that the respondent possesses market power.⁸

The Commission has long held that an invitation to collude violates Section 5 of the FTC Act even where there is no proof that the competitor accepted the invitation.⁹ First, unaccepted solicitations may facilitate coordination between competitors because they

Ohlhausen dissented from the issuance of the Section 5 Unfair Methods of Competition Policy Statement. See <https://www.ftc.gov/public-statements/2015/08/dissenting-statement-commissioner-ohlhausen-ftc-act-section-5-policy>.

⁴ Section 5 Unfair Methods of Competition Policy Statement.

⁵ See, e.g., *California Dental Ass'n v. FTC*, 526 U.S. 756, 781 (1999) (“What is required . . . is an enquiry meet for the case, looking to the circumstances, details, and logic of a restraint.”).

⁶ *In re Valassis Commc'ns, Inc.*, 141 F.T.C. 247, 283 (2006) (Analysis of Agreement Containing Consent Order to Aid Public Comment); see also Address by FTC Chairwoman Edith Ramirez, Section 5 Enforcement Principles, George Washington University Law School at 5 (Aug. 13, 2015), available at https://www.ftc.gov/system/files/documents/public_statements/735411/150813section5speech.pdf.

⁷ See, e.g., *In re North Carolina Bd. of Dental Examiners*, 152 F.T.C. 640, 668 (2011) (noting that inherently suspect conduct is such that can be “reasonably characterized as ‘giv[ing] rise to an intuitively obviously inference of anticompetitive effect.’”) (citation omitted).

⁸ See, e.g., *In re Realcomp II, Ltd.*, 148 F.T.C. ___, Docket No. 9320, 2009 FTC LEXIS 250, at *51 (Oct. 30, 2009) (Comm’n Op.) (explaining that if conduct is “inherently suspect” in nature, and there are no cognizable procompetitive justifications, the Commission can condemn it “without proof of market power or actual effects”).

⁹ See, e.g., *In re Valassis Commc'ns, Inc.*, 141 F.T.C. 247 (2006); *In re Stone Container*, 125 F.T.C. 853 (1998); *In re Precision Moulding*, 122 F.T.C. 104 (1996). See also *In re McWane, Inc.*, Docket No. 9351, *Opinion of the Commission on Motions for Summary Decision* at 20–21 (F.T.C. Aug. 9, 2012) (“an invitation to collude is ‘the quintessential example of the kind of conduct that should be . . . challenged as a violation of Section 5’”) (citing the Statement of Chairman Leibowitz and Commissioners Kovacic and Rosch, *In re U-Haul Int'l, Inc.*, 150 F.T.C. 1, 53 (2010)). This conclusion has been endorsed by leading antitrust scholars. See P. Areeda & H. Hovenkamp, VI ANTITRUST LAW ¶ 1419 (2003); Stephen Calkins, *Counterpoint: The Legal Foundation of the Commission's Use of Section 5 to Challenge Invitations to Collude is Secure*, Antitrust, Spring 2000, at 69. In a case brought under a state's version of Section 5, the First Circuit expressed support for the Commission's application of Section 5 to invitations to collude. See *Liu v. Amerco*, 677 F.3d 489 (1st Cir. 2012).

reveal information about the solicitor's intentions or preferences. Second, it can be difficult to discern whether a competitor has accepted a solicitation. Third, finding a violation may deter similar conduct that has no legitimate business purpose.¹⁰

III. The Proposed Consent Order

The Proposed Order has the following substantive provisions:

Section II, Paragraph A of the Proposed Order enjoins DTC Group from communicating with its competitors about rates or prices, with a proviso permitting public posting of rates.

Section II, Paragraph B prohibits DTC Group from entering into, participating in, maintaining, organizing, implementing, enforcing, inviting, offering, or soliciting an agreement with any competitor to divide markets, to allocate customers, or to fix prices.

Section II, Paragraph C bars DTC Group from urging any competitor to raise, fix, or maintain its price or rate levels, or to limit or reduce service terms or levels.

Sections III–VI of the Proposed Order impose reporting and compliance requirements on DTC Group.

The Proposed Order will expire in 20 years.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 2015–31822 Filed 12–17–15; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–7039–N]

Health Insurance MarketplaceSM, Medicare, Medicaid, and the Children's Health Insurance Program; Meeting of the Advisory Panel on Outreach and Education (APOE), January 13, 2016

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice of meeting.

SUMMARY: This notice announces the new meeting of the Advisory Panel on Outreach and Education (APOE) (the Panel) in accordance with the Federal Advisory Committee Act. The Panel advises and makes recommendations to the Secretary of the U.S. Department of

Health and Human Services (HHS) and the Administrator of the Centers for Medicare & Medicaid Services (CMS) on opportunities to enhance the effectiveness of Health Insurance MarketplaceSM,¹ Medicare, Medicaid, and Children's Health Insurance Program (CHIP) consumer education strategies. This meeting is open to the public.

DATES: Meeting Date: Wednesday, January 13, 2016 8:30 a.m. to 4 p.m. Eastern Standard Time (EST).

Deadline for Meeting Registration, Presentations and Comments: Wednesday, December 30, 2015, 5 p.m., EST.

Deadline for Requesting Special Accommodations: Wednesday, December 30, 2015, 5:00 p.m., e.s.t.

ADDRESSES: Meeting Location: U.S. Department of Health & Human Services, Hubert H. Humphrey Building, 200 Independence Avenue SW., Room 425A, Conference Room, Washington, DC 20201.

Presentations and Written Comments:

Presentations and written comments should be submitted to: Abigail Huffman, Designated Federal Official (DFO), Division of Forum and Conference Development, Office of Communications, Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Mailstop S1–05–06, Baltimore, MD 21244–1850 or via email at Abigail.Huffman1@cms.hhs.gov.

Registration: The meeting is open to the public, but attendance is limited to the space available. Persons wishing to attend this meeting must register at the Web site <https://www.regonline.com/apoejan2016meeting> or by contacting the DFO as listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice, by the date listed in the **DATES** section of this notice. Individuals requiring sign language interpretation or other special accommodations should contact the DFO at the address listed in the **ADDRESSES** section of this notice by the date listed in the **DATES** section of this notice.

FOR FURTHER INFORMATION CONTACT: Abigail Huffman, Designated Federal Official, Office of Communications, CMS, 7500 Security Boulevard, Mail Stop S1–05–06, Baltimore, MD 21244, 410–786–0897, email Abigail.Huffman1@cms.hhs.gov. Additional information about the APOE is available on the Internet at: <http://www.cms.gov/Regulations-and-Guidance/Guidance/FACA/APOE.html>.

¹⁰ *In re Valassis Commc'ns, Inc.*, 141 F.T.C. 247, 283 (2006) (Analysis of Agreement Containing Consent Order to Aid Public Comment).

¹ Health Insurance MarketplaceSM and MarketplaceSM are service marks of the U.S. Department of Health and Human Services.

Press inquiries are handled through the CMS Press Office at (202) 690-6145.

SUPPLEMENTARY INFORMATION:

I. Background

The Advisory Panel for Outreach and Education (APOE) (the Panel) is governed by the provisions of Federal Advisory Committee Act (FACA) (Pub. L. 92-463), as amended (5 U.S.C. Appendix 2), which sets forth standards for the formation and use of federal advisory committees. The Panel is authorized by section 1114(f) of the Social Security Act (42 U.S.C. 1314(f)) and section 222 of the Public Health Service Act (42 U.S.C. 217a).

The Secretary of the U.S. Department of Health and Human Services (HHS) (the Secretary) signed the charter establishing the Citizen's Advisory Panel on Medicare Education² (the predecessor to the APOE) on January 21, 1999 (64 FR 7899, February 17, 1999) to advise and make recommendations to the Secretary and the Administrator of the Centers for Medicare & Medicaid Services (CMS) on the effective implementation of national Medicare education programs, including with respect to the Medicare+Choice (M+C) program added by the Balanced Budget Act of 1997 (Pub. L. 105-33).

The Medicare Modernization Act of 2003 (MMA) (Pub. L. 108-173) expanded the existing health plan options and benefits available under the M+C program and renamed it the Medicare Advantage (MA) program. We have had substantial responsibilities to provide information to Medicare beneficiaries about the range of health plan options available and better tools to evaluate these options. The successful MA program implementation required CMS to consider the views and policy input from a variety of private sector constituents and to develop a broad range of public-private partnerships.

In addition, Title I of the MMA authorized the Secretary and the Administrator of CMS (by delegation) to establish the Medicare prescription drug benefit. The drug benefit allows beneficiaries to obtain qualified prescription drug coverage. In order to effectively administer the MA program and the Medicare prescription drug benefit, we have substantial responsibilities to provide information to Medicare beneficiaries about the range of health plan options and

benefits available, and to develop better tools to evaluate these plans and benefits.

The Affordable Care Act (Patient Protection and Affordable Care Act, Pub. L. 111-148, and Health Care and Education Reconciliation Act of 2010, Pub. L. 111-152) expanded the availability of other options for health care coverage and enacted a number of changes to Medicare as well as to Medicaid and the Children's Health Insurance Program (CHIP). Qualified individuals and qualified employers are now able to purchase private health insurance coverage through competitive marketplaces called Affordable Insurance Exchanges, or "Exchanges" (we also call an Exchange a Health Insurance MarketplaceSM or MarketplaceSM). In order to effectively implement and administer these changes, we must provide information to consumers, providers, and other stakeholders through education and outreach programs regarding how existing programs will change and the expanded range of health coverage options available, including private health insurance coverage through an Exchange. The APOE (the Panel) allows us to consider a broad range of views and information from interested audiences in connection with this effort and to identify opportunities to enhance the effectiveness of education strategies concerning the Affordable Care Act.

The scope of this panel also includes advising on issues pertaining to the education of providers and stakeholders with respect to the Affordable Care Act and certain provisions of the Health Information Technology for Economic and Clinical Health (HITECH) Act enacted as part of the American Recovery and Reinvestment Act of 2009 (ARRA).

On January 21, 2011, the Panel's charter was renewed and the Panel was renamed the Advisory Panel for Outreach and Education. The Panel's charter was most recently renewed on January 21, 2015, and will terminate on January 21, 2017 unless renewed by appropriate action.

Under the current charter, the APOE will advise the Secretary and the Administrator on optimal strategies for the following:

- Developing and implementing education and outreach programs for individuals enrolled in, or eligible for, Medicare, Medicaid, and the Children's Health Insurance Program (CHIP), or coverage available through a Health Insurance MarketplaceSM.
- Enhancing the federal government's effectiveness in informing Health Insurance MarketplaceSM, Medicare,

Medicaid, and CHIP consumers, issuers, providers, and stakeholders, through education and outreach programs, on issues regarding these programs, including the appropriate use of public-private partnerships to leverage the resources of the private sector in educating beneficiaries, providers, and stakeholders.

- Expanding outreach to vulnerable and underserved communities, including racial and ethnic minorities, in the context of Health Insurance MarketplaceSM, Medicare, Medicaid, and CHIP education programs.
- Assembling and sharing an information base of "best practices" for helping consumers evaluate health coverage options.
- Building and leveraging existing community infrastructures for information, counseling, and assistance.
- Drawing the program link between outreach and education, promoting consumer understanding of health care coverage choices, and facilitating consumer selection/enrollment, which in turn support the overarching goal of improved access to quality care, including prevention services, envisioned under the Affordable Care Act.

The current members of the Panel are: Kellan Baker, Associate Director, Center for American Progress; Robert Blancato, President, Matz, Blancato & Associates; Dale Blasier, Professor of Orthopaedic Surgery, Department of Orthopaedics, Arkansas Children's Hospital; Deborah Britt, Executive Director of Community & Public Relations, Piedmont Fayette Hospital; Deena Chisolm, Associate Professor of Pediatrics & Public Health, The Ohio State University, Nationwide Children's Hospital; Josephine DeLeon, Director, Anti-Poverty Initiatives, Catholic Charities of California; Robert Espinoza, Vice President of Policy, Paraprofessional Healthcare Institute; Jennifer Gross, Manager of Political Field Operations, Planned Parenthood of Montana; Louise Scherer Knight, Director, The Sidney Kimmel Comprehensive Cancer Center at Johns Hopkins; Miriam Mobley-Smith, Dean, Chicago State University, College of Pharmacy; Roanne Osborne-Gaskin, M.D., Senior Medical Director, MDWise, Inc.; Cathy Phan, Outreach and Education Coordinator, Asian American Health Coalition DBA HOPE Clinic; Kamila Pickett, Litigation Support, Independent Contractor; Brendan Riley, Outreach and Enrollment Coordinator, NC Community Health Center Association; Jeanne Ryer, Director, New Hampshire Citizens Health Initiative, University of New Hampshire; Alvia Siddiqi, Medicaid Managed Care

² We note that the Citizen's Advisory Panel on Medicare Education is also referred to as the Advisory Panel on Medicare Education (65 FR 4617). The name was updated in the Second Amended Charter approved on July 24, 2000.

Community Network (MCCN) Medical Director, Advocate Physician Partners, Carla Smith, Executive Vice President, Healthcare Information and Management Systems Society (HIMSS); Tobin Van Ostern, Vice President and Co-Founder, Young Invincibles Advisors; and Paula Villescaz, Senior Consultant, Assembly Health Committee.

II. Provisions of This Notice

In accordance with section 10(a) of the FACA, this notice announces a meeting of the APOE. The agenda for the January 13, 2016 meeting will include the following:

- Welcome and listening session with CMS leadership
- Recap of the previous (October 7, 2015) meeting
- Affordable Care Act initiatives
- An opportunity for public comment
- Meeting summary, review of recommendations, and next steps

Individuals or organizations that wish to make a 5-minute oral presentation on an agenda topic should submit a written copy of the oral presentation to the DFO at the address listed in the **ADDRESSES** section of this notice by the date listed in the **DATES** section of this notice. The number of oral presentations may be limited by the time available. Individuals not wishing to make an oral presentation may submit written comments to the DFO at the address listed in the **ADDRESSES** section of this notice by the date listed in the **DATES** section of this notice.

Authority: Sec. 222 of the Public Health Service Act (42 U.S.C. 217a) and sec. 10(a) of Pub. L. 92-463 (5 U.S.C. App. 2, sec. 10(a) and 41 CFR 102-3).

Dated: December 10, 2015.

Andrew M. Slavitt,

Acting Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 2015-31861 Filed 12-17-15; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifiers: CMS-855S, CMS-10142 and CMS-R-262]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing

an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, and to allow a second opportunity for public comment on the notice. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments on the collection(s) of information must be received by the OMB desk officer by *January 19, 2016*:

ADDRESSES: When commenting on the proposed information collections, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be received by the OMB desk officer via one of the following transmissions:

OMB, Office of Information and Regulatory Affairs, Attention: CMS Desk Officer, Fax Number: (202) 395-5806 *OR*, Email: *OIRA_submission@omb.eop.gov*.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of following:

1. Access CMS' Web site address at <http://www.cms.hhs.gov/PaperworkReductionActof1995>.
2. Email your request, including your address, phone number, OMB number, and CMS document identifier, to Paperwork@cms.hhs.gov.
3. Call the Reports Clearance Office at (410) 786-1326.

FOR FURTHER INFORMATION CONTACT: Reports Clearance Office at (410) 786-1326.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501-3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term "collection of

information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires federal agencies to publish a 30-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice that summarizes the following proposed collection(s) of information for public comment:

1. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Medicare Enrollment Application—Durable Medical Equipment, Prosthetics, Orthotics and Supplies (DMEPOS) Suppliers; *Use:* The primary function of the CMS 855S Durable Medical Equipment, Prosthetics, Orthotics and Supplies (DMEPOS) supplier enrollment application is to gather information from a supplier that tells us who it is, whether it meets certain qualifications to be a health care supplier, where it renders its services or supplies, the identity of the owners of the enrolling entity, and information necessary to establish correct claims payment.

The goal of this revision of the CMS-855S is to simplify and clarify the current data collection and to remove obsolete and/or redundant questions. Grammar and spelling errors were corrected. Limited informational text has been added within the application form and instructions in conjunction with links to Web sites when detail is needed by the supplier. To clarify current data collection differentiations and to be in sync with accreditation coding, section 3D ("Products and Services Furnished by This Supplier") has been updated. This revision does not offer any new material data collection. CMS received one comment in response to the 60-day notice. *Form Number:* CMS-855S (OMB Control Number: 0938-1056); *Frequency:* Annually; *Affected Public:* Private sector (, Business or other for-profits and Not-for-profit institutions); *Number of Respondents:* 31,915; *Total Annual Responses:* 31,915; *Total Annual Hours:* 36,842. (For policy questions regarding this collection contact Kimberly McPhillips at 410-786-5374.)

2. *Type of Information Collection Request:* Revision of a currently